

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230013792

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions (UOTHC) discharge from the U.S. Army Reserve (USAR) to under honorable conditions (general).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 26 November 2007
- Certificate, Southern Mississippi Community College, Associate of Applied Science, dated 14 May 2014
- License Verification Report, Registered Nurse, issued on 28 May 2014
- Certificate, Southern Louisiana University, Bachelor of Science, dated 12 December 2015
- Certificate, American Heart Association, Instructor Essentials Basic Life Support Course, dated 12 February 2023
- Certificate, Louisiana Early Childhood Ancillary Certificate, dated 5 September 2023
- Statement of support

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states she entered the Army as a private first class (PFC)/E-3. For years, her attendance was great. She did everything in her control to be the best Soldier at her assigned unit, the 344th in Bogalusa, LA. When the unit shut down, she was transferred to the 321st in Baton Rouge, LA. She could not contact the unit, and "it says it is permanently closed down." She was not sent any documentation from either unit regarding her years in service or retirement points.

3. The applicant enlisted in the USAR on 22 May 2007. She entered active duty on 4 July 2007 for the purpose of completing initial active duty for training (IADT). Upon completion, she was awarded military occupational specialty (MOS) 92A (Automated Logistical Specialist). The highest rank she attained was PFC/E-3.

4. The applicant was released from active duty and returned to the control of the USAR on 26 November 2007, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of completion of required active service. Her DD 214 shows her service was uncharacterized, with separation code MBK. She was credited with 4 months and 23 days of net active service [See Administrative Notes].

5. The applicant was reassigned to Headquarters, 344 Combat Support (CS) Company, Bogalusa, LA, effective 11 December 2007. Her Personnel Qualification Record shows she was reassigned to the 321 CS Brigade (BDE), Baton Rouge, LA, effective 27 October 2011.

6. The applicant's record contains three letters of instruction from the Commander, 321 CS BDE, Baton Rouge, LA, dated 20 August 2012, 19 November 2012, and 14 January 2013, notifying the applicant that she was absent from scheduled unit training. All three letters were sent via certified mail, with an affidavit of service by mail signed by the unit administrator.

7. The applicant was sent a notification, on 21 March 2013, of her commander's intent to initiate action to separate her from the USAR under the provisions of AR 135-178 (Army National Guard (ARNG) and USAR – Enlisted Administrative Separations), Chapter 13, by reason of unsatisfactory participation, with a UOTHC characterization of service. The commander noted the applicant accrued 10 absences in a 12 month period and failed to attend annual training. An acknowledgement and request for conditional waiver were included with the letter. A U.S. Postal Service tracking form shows the separation packet was delivered on 15 April 2013.

8. On 28 May 2013, the immediate commander formally recommended the applicant's separation from service, prior to her expiration term of service, under the provisions of AR 135-178, Chapter 13, with a UOTHC character of service. As reasons for the recommended action, the commander stated the applicant failed to attend battle assemblies and keep the unit informed; she could not be retained due to her lack of concern toward her military obligation; he did not feel she would be an asset in the event of a mobilization; and she weakened the collective strength of the Army Reserves. The Staff Judge Advocate and Immediate Commanders reviewed and concurred with the recommendation.

9. On 26 August 2013, the separation authority approved the recommended separation action, directed the applicant be reduced in rank to private (PV1)/E-1, and the issuance of a UOTHC discharge.

10. Orders 13-248-00016, issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC, on 5 September 2013, shows the applicant was reduced to PV1/E-1 and discharged from the USAR, under the provisions of AR 135-178, with a UOTHC character of service, effective 10 September 2013.

11. The applicant provides the following:

a. Four certificates dated 14 May 2014 to 5 September 2023, which highlight several of the applicant's post service accomplishments, to include earning her associate and bachelor's degrees, obtaining a nursing license, and early childhood ancillary certificate, and attending the American Heart Association Instructor Essentials Basic Life Support Course.

b. In an anonymous statement of support, the applicant's sibling states, [the applicant] enlisted in the Army at the age of 19, with a child under the age of one. She had confidence and faith that she would be of great service. She is a wonderful service to many now. She has been a nurse for the past 13 years. She worked during COVID and put her life on the front line to help as many people as she could. She is an "overcomer" and passionate about serving others.

12. AR 135-178, prescribes policies, criteria, and procedures for the administrative separation of ARNG and USAR enlisted Soldiers for a variety of reasons; to include the Soldier's refusal to comply with orders or correspondence and unsatisfactory participation in drills.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of missing more than nine battle assemblies. The Board considered the applicant's post service achievements as a nurse and her service to the community especially during the COVID pandemic. However, the Board agreed the applicant did not demonstrate by a

preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an under honorable conditions (general) discharge. Therefore, the Board denied relief.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of IADT. She was awarded an MOS at the completion of training and returned to the control of the USAR. Regulatory guidance provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue the applicant a DD Form 214 for the period ending 26 November 2007, showing her character of service as Honorable.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures) provides guidance governing absences from Ready Reserve training for enlisted personnel.

a. A Soldier becomes an unsatisfactory participant when he has accrued nine or more unexcused absences from scheduled drills during a 1-year period.

b. After accruing four unexcused absences in a 1-year period, the unit commander is required to notify the Soldier via a prescribed letter of instructions – unexcused absence. The delivery of this notice will be either in person or by certified mail, restricted delivery, return receipt requested. After each additional unexcused absence in a 1-year period, the Soldier will receive a similar letter of instructions. Each of these notices will be filed in the Soldier's military personnel records.

3. AR 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the

Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

4. AR 635-200 states a separation will be described as an entry level separation, with service uncharacterized, if processing is initiated while a Soldier is in an entry level status, except under specific circumstances. For ARNG and USAR Soldiers, entry level status begins upon enlistment in the ARNG or USAR and terminates for Soldiers ordered to IADT for one continuous period-180 days after beginning training or Soldiers ordered to IADT for the split or alternate training option-90 days after beginning Phase II (advanced individual training). (Soldiers completing Phase I (basic training or basic combat training) remain in entry level status until 90 days after beginning Phase II.

5. AR 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system. It states a DD Form 214 will be prepared for Reserve Component (RC) Soldiers awarded an MOS even if active duty is less than 90 days. RC Soldiers completing active duty that results in the award of an MOS, even when the active duty period was less than 90 days (for example, completion of the advanced individual training component of the ARNG of the United States (ARNGUS) Alternate Training Program or USAR Split Training Program). When a RC Soldier successfully completes IADT the character of service is Honorable unless directed otherwise by the separation approval authority.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//