

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230013933

APPLICANT REQUESTS: upgrade of her bad-conduct discharge (BCD) to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty),  
6 August 2005
- DD Form 214, 10 January 2008

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 respectfully requests a review and upgrade of her Army discharge status from a BCD to honorable. During her time of service, she faced a challenging situation with her reporting sergeant, which left her feeling vulnerable and scared. In her youth and uncertainty about how to handle the situation, she disclosed her sexual orientation under the don't ask don't tell policy. Regrettably, this led to a series of retaliatory actions against her, negatively impacting her performance and conduct. She deeply regrets the choices she made and takes full responsibility for them. However, she believes it is crucial to consider the context in which these actions occurred. Since her discharge, she has had the opportunity to grow personally and mature as an individual, fully aligning with the values and principles upheld by the Army. She kindly requests that her subsequent conduct and growth be taken into account when reviewing her military record. She is committed to the high standards set by the Army and is ready to uphold them if granted the opportunity to have her record accurately reflect her dedication to those values. She genuinely appreciates the Board's time and consideration in this matter and she trusts the Board's judgment to make a fair and thoughtful decision regarding her discharge status.

3. The applicant's service record contains the following documents:

a. She had prior service in the U.S. Army Reserve and her DD Form 214 (from being activated) shows she was honorably discharged on 16 November 2005.

d. DD Form 4 shows she enlisted in the Regular Army on 17 November 2005.

e. Special Court-Martial Order 5, published by Headquarters, 1st Infantry Division, and Fort Riley, 7 March 2007, shows she was tried by a Special Court-Martial, in the rank of private/E-2 (PV2) on 18 December 2006. She was found guilty of:

- On or about 4 October 2006, without authority and with intent to avoid field exercises, absent herself from her unit and did remain so absent until on or about 8 October 2006
- On or about 27 September 2006 and 28 September 2006, fail to go at the prescribed times to her appointed place of duty
- On or about 25 September 2006, having received a lawful order from her first sergeant, a noncommissioned officer (NCO), then known by her to be an NCO an order which it was her duty to obey, did willfully disobey the same

She was sentenced to reduction to the grade of private/E-1 (PVT), to forfeit \$849 pay per month for three months, to be confined for three months, and to be discharged from the service with a BCD. On 7 March 2007, the convening authority approved the sentence, and except for that part of the sentence extending to a BCD, ordered it executed. She was credited with 69 days of confinement against the sentence to confinement.

f. Special Court-Martial Order Number 165, published by Headquarters, U.S. Army Field Artillery Center and Fort Sill, 3 October 2007, states the sentence to reduction to the grade of PVT, forfeiture of \$849 pay per month for three months, confinement for three months, and a BCD, had been finally affirmed. She was credited with 69 days of confinement against the sentence to confinement. That portion of the sentence extending to confinement had been served and the BCD would be executed.

g. On 10 January 2008, she was discharged accordingly. Her DD Form 214 shows she had completed 1 year, 11 months, and 2 days of net active-duty service. She was discharged pursuant to a court-martial. Her character of service was a BCD, her separation code was JJD, and her reentry code was 4. She had lost time from 1 October 2006 through 8 October 2006 and 10 October 2006 through 23 December 2006. She was awarded the Army Service Ribbon.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 record, the Board determined there is sufficient evidence of in-service mitigating factors to support clemency. The Board found that the discharge characterization for the misconduct was too harsh for the circumstances. The Board found an upgrade to general under honorable conditions was warranted. Therefore, the Board granted 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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 10 January 2008, to show her characterization of service as General Under Honorable Conditions.



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):

Correct item 24 (Character of Service) on her DD Form 214 for the period ending 6 August 2005 to honorable. She is a USAR Soldier who received a military occupational specialty and returned to her USAR unit.

REFERENCES:

1. Title 10, U.S. Code, 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. Army Regulation 635-200 (Personnel Separations) provides a Soldier would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed and the affirmed sentence ordered duly executed.
  - a. An honorable character of service represented a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was

appropriate when the quality of the member's service had generally met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. Title 10, USC, section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

5. Army Regulation 635-5-1 (Separation Program Designators (SPD)) in effect at the time states the SPD as a result of Court-Martial, other would be JJD.

6. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) 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//