

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230014397

APPLICANT REQUESTS:

- an upgrade of her bad conduct discharge to general, under honorable conditions
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Three Character Letters
- Associate of Arts Diploma

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 is requesting an upgrade of her bad conduct discharge to reflect a general, under honorable conditions discharge. She believes she was discharged from the military under harsher penalties than others for far worse crimes or behavioral incidents. The applicant noted she had no prior disciplinary actions or misconduct prior to her court-martial. She was not afforded the opportunity for rehabilitation and her bad checks were paid prior to her discharge and court-martial. She did not receive her last check and was separated from her son for four months. Finally, the applicant indicates she did not know she had the option to request a discharge upgrade until she went to the Department of Veterans Affairs (VA) for assistance.
3. The applicant provides:
  - a. Three character letters identified the applicant as serving in the position of Financial Secretary for the school system. Further noted was the applicant's character traits as delightful to be around, positive contributor to the office, intelligent, self-

motivated, kind, trustworthy, great team leader and team player, she went above and beyond her scope of duties, and remained fair and impartial with critical decisions. The character letters are available for review by the Board.

- Ms. DW, Special Education Teacher, 2 September 2022
- Ms. SW, Inclusion/At Risk Aide, 30 August 2022
- Ms. AVW, 13 July 2023

b. Her Associate of Arts in Biology diploma obtained on 11 May 2018 for successful completion of the prescribed course of study.

4. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 21 September 1998.

b. On 25 September 2000, she was convicted by a general court-martial of three specifications of making and uttering bad checks.

(1) Specification one she uttered 10 bad checks between on or about 29 January 2000 and 2 February 2000 in a total amount of about \$1,404.36

(2) Specification two she uttered 3 bad checks between on or about 30 December 1999 and 11 March 2000 in a total amount of about \$400.00.

(3) Specification three she uttered 14 bad checks between on or about 4 February 2000 and 7 February 2000 in a total amount of about \$1,282.98.

The court sentenced her to reduction to the private (E-1), confinement for 5 months, forfeiture of all pay and allowances and a bad conduct discharge.

c. On 6 March 2001, the convening authority approved so much of the sentence as provides for reduction to the grade of E1; four months confinement; and except for the bad conduct discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

d. General Court-Martial Order Number 85, dated 20 February 2003, after Article 71(c) was complied with and the sentence was affirmed, ordered the bad conduct discharge executed.

e. On 26 September 2003, she was discharged from active duty. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged in accordance with chapter 3 of Army Regulation (AR) 635-200 (Active Duty Enlisted Separations) with a bad conduct discharge characterization of service. Her DD Form

214 (Certificate of Release or Discharge from Active Duty) shows she completed 4 years, 8 months, and 25 days of active service with 101 days of lost time. She was assigned separation code JJD and the narrative reason for separation listed as "Court-Martial, Other," with reentry code 4.

5. By regulation, a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

6. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant was convicted by a court-martial that sentenced him to a bad conduct discharge. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (uttering 27 bad checks totaling over \$3,000). Her conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which she was convicted. She was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in the separation processing.

b. In support of a clemency determination, the applicant provides an Associate of Arts in Biology diploma obtained on 11 May 2018 for successful completion of the prescribed course of study. She also provides three character reference letters that identified the applicant as serving in the position of Financial Secretary for the school system. Nevertheless, of major concern for Board members is the fact that the applicant expresses no remorse and takes no responsibility for her misconduct. On the contrary,

she blames her own misconduct on others. As such, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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.

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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.

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 – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7c (Under Other Than Honorable Conditions) states a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

3. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of 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 correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. 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 based on 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//