

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230015111

APPLICANT REQUESTS:

- an upgrade of her characterization of service from under honorable conditions (General)
- removal of "drug abuse" from her DD Form 214 (Certificate of Release or Discharge from Active Duty)
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record), 26 September 2023
- self-authored statement
- transcripts
- Seven Letters of Support

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 enlisted at a young age, after suffering sexual abuse, to better her life.

a. While in training she excelled; however, once in advanced individual training she got caught up in the wrong crowd. She ended up trying cocaine and failed a urinalysis. She received punishment, and upon completion of her punishment she was able to successfully earn her spot back as being a squad leader. She was sent to reclassify and was successful in becoming a 74D (Chemical Operations Specialist).

b. Upon arrival to her first duty station, a noncommissioned officer (NCO) racially targeted her. Dealing with her past abuse, her ill father, her brother having marital issues, unresolved issues with her mother, the racist NCO, she started hanging out with

the wrong crowd and did cocaine again. She failed a urinalysis and was led to believe she was not able to make a positive comeback, this led her to not caring about anything.

c. She realizes her actions were wrong and if she could go back she would change her past. She admits to using marijuana at the age of 21; however, she has not tried or experimented with drug use since. She is now married, has seven children, and has never been in trouble with the law aside from a ticket. She has earned her associate degree while raising children and is working towards earning her bachelor's degree. She is committed to her family, church, school, and non-profit organizations.

d. She is requesting an upgrade of her characterization of service and for her DD Form 214 to have the words "drug abuse" removed because she is embarrassed and ashamed of her past. Upon her graduation, receiving her bachelors, she wants to disclose that she was in the military and does not want her DD Form 214 to negatively affect her future.

3. The applicant enlisted in the Regular Army on 19 January 2006.

4. She accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 17 April 2007, for wrongfully using cocaine, between on or about 25 February 2007 and 26 March 2007. Her punishment consisted of reduction to private/E-1, forfeiture of \$650.00 pay per month for two months, 45 days of extra duty, and 45 days restriction.

5. A memorandum from the Chief, Substance Abuse Services, dated 18 June 2007, states the applicant was referred for treatment on 17 April 2007 and was enrolled in the Army Substance Abuse Program (ASAP). She was offered services, scheduled to attend ASAP activities, and participate in weekly group sessions, she missed attending classes, was rescheduled, and was a no-show for her rescheduled classes. Additionally, stating she received a positive urinalysis for cocaine and appeared to be unwilling to commit to her agreed upon treatment objectives. She either could not or would not discontinue her excessive substance abuse. It would be appropriate for the command to consider and initiate administrative action.

6. On 10 July 2007, the applicant accepted NJP under the provisions of Article 15 of the UCMJ, for wrongfully using cocaine, between on or about 16 March 2007 and 16 April 2007; for failing to go to her prescribed appointed place of duty on or about 24 March 2007, accountability formation, work call, and close of business formation; and failure to go to her prescribed appointed place of duty on or about 21 May 2007, work call. Her punishment consisted of forfeiture of \$650.00 pay per month for two months, 45 days of extra duty and restriction.

7. The applicant's immediate commander notified her on 17 July 2007 of the intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, by reason of commission of a serious offense. As the specific reasons, the commander cited the applicant's two NJPs for wrongfully using cocaine. He recommended she receive an under honorable conditions (general) discharge, and she acknowledged receipt of the notification.

8. The applicant consulted with legal counsel and was advised of the basis for the contemplated separation action and its effects; of the rights available to her; and the effect of any action taken by her to waive her rights. She waived consideration, a personal appearance, and consulting counsel before an administrative separation board and elected not to submit a statement in her own behalf. She further understood she may encounter substantial prejudice in civilian life.

9. The immediate commander formally recommended the applicant's separation, prior to the expiration of her term of service, under the provisions of AR 635-200, paragraph 14-12c. Her intermediate commander recommended approval of the separation action on 17 July 2007 with a characterization of service of under honorable conditions (general).

10. The separation authority approved the recommended separation action on 20 July 2007, and further directed the issuance of an under honorable conditions (general) discharge.

11. The applicant was discharged on 2 August 2007, under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct (drug abuse). Her DD Form 214 shows her characterization of service was under honorable conditions (General), with separation code JKK and reentry code of 4. She was credited with 1 year, 6 months, and 14 days of active service. She was authorized or awarded the National Defense Service Medal and the Army Service Ribbon.

12. On 4 October 2023, the applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of her characterization of discharge. After careful review of her application, military records, and all other available evidence, the ADRB determined she was properly and equitably discharged and denied her request for a change in her characterization and/or narrative reason.

13. She additionally provides:

a. Her transcripts from the Grand Canyon University showing her enrollment and grades in various classes while working towards earning her degree of a Bachelor of Science in Accounting.

b. Seven-character reference statements, summarizing her as being a mentor, professional, honest, trustworthy, hard-working, driven, loyal, faithful. Stating she is heavily involved in her church, respected by her church, family, and community, she is compassionate and lends a hand whenever called upon. Everyone agrees that she is an amazing mother, a great person, someone who takes care of her family and others in need, and well respected.

14. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant wrongfully used cocaine and was discharged accordingly. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board considered the applicant's extensive post-service accomplishments, seven letters of support, and post-service transcript and based on equity and clemency recommended relief be granted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 2 August 2007 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.
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/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, Boards 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//