

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240000009

APPLICANT REQUESTS: an upgrade of her under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 that it has been over 30 years since she served her country. She believes she deserves this upgrade because she has lived as an outstanding citizen.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 13 September 1983.
 - b. Six DA Forms 4856-R (General Counseling Form) dated between 28 March 1984 and 12 September 1985 show the applicant was counseled for:
 - failure to report to her appointed place of duty (1230 formation)
 - failure to report to her appointed place of duty (0710 formation)
 - dereliction of duty (failure to maintain generators)
 - failure to report to her appointed place of duty (morning and afternoon work call)
 - failure to report to her appointed place of duty (afternoon work call)

c. On 21 October 1985, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), by wrongfully using marijuana and cocaine. Her punishment included reduction to private first class (PFC)/E-3.

d. On 30 July 1986 she was counseled for failure to report to formation at 0600 hours. She acknowledged receipt and in item 11 stated she did not concur due to the fact she "had a problem with [her] car."

e. On 26 March 1987 she was counseled for failure to report to an appointment at 0730 hours on 16 March 1987. The applicant failed to sign acknowledgement of receipt.

f. On 7 May 1987, the applicant accepted NJP, under the provisions of Article 15, UCMJ, by wrongfully using cocaine. Her punishment included reduction to PFC/E-3.

g. On 12 May 1987, the applicant was formally counseled about her duty performance and misconduct. She was informed that if her conduct continued, she would be eliminated from the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations).

h. On 9 June 1987, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Chapter 14-12c, AR 635-200 for commission of a serious offense with a general discharge. His proposed reason was due to two-time abuse of illegal drugs.

i. After consultation with legal counsel, the applicant acknowledged:

- the rights available to her and the effect of waiving said rights
- she understands that if she has less than six years of active service and will not receive an other than honorable discharge, she will not be entitled to have her case considered by a board
- she may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to her
- she may apply to the Army Discharge Review Board or the ABCMR for an upgrade request
- she will be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge

j. The immediate and intermediate commander's recommended separation with a general discharge.

k. On 23 June 1987, consistent with the chain of command recommendations, the separation authority approved separation of the applicant in accordance with AR 635-200, Chapter 14-12c with a General Discharge Certificate.

l. The applicant was discharged from active duty on 6 July 1987. Her DD Form 214 shows she was discharged under the provisions of chapter 14-12c of AR 635-200 with an under honorable conditions (General) characterization of service. She completed 3 years, 9 months, and 24 days of active service. She was assigned separation code JKQ and the narrative reason for separation listed as "misconduct – commission of a serious offense," with a reentry code of 3/3C.

4. By regulation, AR 635-200, in effect at the time, states that action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

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

BOARD DISCUSSION:

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. The evidence shows the applicant committed a serious misconduct (wrongfully using illegal drugs). As a result, her chain of command, initiated separation action against her. She received an under honorable conditions discharge (general). The Board found no error or injustice in her separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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. AR 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 acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribes the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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.

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//