

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240002427

APPLICANT REQUESTS: in effect, upgrade of her under honorable conditions (general) discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Letter of Reference

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, in effect she received a dishonorable [sic] discharge for failing an Army Physical Fitness Test (APFT). She was unfairly given a lower characterization of discharge.

a. In 1990, she deployed to Operation Desert Storm for over six months, while deployed she met the fitness demands of combat operations. Upon her redeployment, she struggled with trying to adjust back to a normal life after being in a combat environment. She started to take over the counter medication to aid in sleep and anxiety. She also had a very close friend murdered by her husband on the base after her return from Desert Storm.

b. Five months after redeployment her commanding officer had started the process to administratively discharge her. He informed her that her discharge would automatically be upgraded to an honorable discharge after six months. Once she was discharged, she reached out to her local city councilman requesting his assistance in obtaining a discharge upgrade, but received negative results from this effort.

c. Under today's military standards, Soldiers' reintegration plan is remarkably different. Soldiers return home, complete post-deployment recovery and administrative requirements, and are reintegrated into home station life. She truly believes she would not have been unjustly discharged under the Army's current post-deployment reintegration plan.

3. The applicant provides a letter of reference from Sergeant Major (SGM) (Retired) W-H. W-, which states in effect:

a. He has known her for more than 35 years. She was one of his former Soldiers stationed at Fort Riley, KS. As her senior noncommissioned officer (NCO), his impression of her has always been positive. As a Soldier, she was always a hard-worker, self-starter, and team player. She deployed to Operation Desert Storm supporting the 1st Infantry Division as a unit supply specialist. Her overall performance and conduct were excellent, while performing under many adverse conditions. After redeployment she did not meet the Army standards required to pass the APFT, which led to her receiving an under honorable conditions (general) discharge from the Army.

b. Since leaving the Army, she went on to have a very successful career as a New York City correction officer, achieving the rank of sergeant. The SGM is convinced that her military experiences aided in her 26 years of commendable service with the Department of Correction. The SGM is impressed by her good conduct, involvement in local charitable activities, and an impressive career, after her discharge.

4. The applicant's service record contain the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the Regular Army and entered active duty on 4 April 1989.

b. DA Form 2-1 (Personnel Qualification Record) item 5 (Oversea Service) shows she had service in Saudi Arabia from 18 December 1990 through 15 May 1991.

c. DA Forms 705 (APFT Scorecard) shows she took the APFT on:

- 14 August 1989, failed
- 2 March 1990, failed
- 2 March 1990 [sic], passed
- 14 September 1990, failed
- 26 July 1991, failed
- 6 September 1991, failed
- 16 December 1991, failed

d. DA Form 4856 (General Counseling Form) show she was counseled on 14 November 1989, for failing the APFT. She concurred with the counseling and signed the form.

e. DA Form 4187 (Personnel Action) shows she was reduced to the grade of private/E-1 effective 22 November 1989 after receiving an Article 15. The Article 15 is not available for the Board's review.

f. DA Forms 4856 (General Counseling Form) shows she was counseled on:

(1) 21 December 1989 monthly counseling states she showed good attitude toward what she is told to do. Her downfall is her poor performance in physical training. She needed to work more on her own to improve her performance. She concurred with the counseling and signed the form.

(2) 12 January 1990 for failing her record APFT and being overweight. She non-concurred with the counseling and signed the form.

(3) 16 January 1990 for failing to obey a lawful order to get ready for remedial physical training. She non-concurred with the counseling and signed the form.

(4) 27 April 1990 monthly counseling, she passed the APFT but still needed to work on running. She non-concurred with the counseling and signed the form.

(5) 31 May 1990 monthly counseling, she had shown initiative and a strong desire to get the job done in an efficient manner. She needed to work on her physical training, which would benefit her in the long run. She concurred with the counseling and signed the form.

(6) 29 June 1990 monthly counseling, she showed in several instances she took initiative; however, her attitude toward work needed a lot of improvement. She failed to complete any company or battalion run. She concurred with the counseling and signed the form.

(7) 3 September 1991 monthly counseling, she had very good work habits. She needed to concentrate on physical training and weight control. Failure to meet the Army standards may result in discharge. She concurred with the counseling and signed the form.

(8) 7 September 1991, for failing a diagnostic APFT. She failed the run and has not made satisfactory progress. She concurred with the counseling and signed the form.

g. On 3 March 1992, the applicant's commander initiated separation action to separate her for unsatisfactory performance. The reason for the commander's proposed action was numerous APFT failures and a negative attitude. The commander was recommending she receive an under honorable conditions (general) discharge. The separation authority was not bound by the commander's recommendation as to characterization of service.

h. On 6 March 1992, she was counseled by consulting counsel on the basis for the contemplated action to separate her for unsatisfactory performance, its effects, of the right available to her, and the effect of any action taken by her in waiving her rights. She elected to submit statements in her own behalf and requested consulting counsel. She submitted a statement, which states, in effect:

(1) She would like to appeal the recommendation her commander had decided for her discharge from the military. He recommended an under honorable conditions (general) discharge. She did not feel she should receive an under honorable conditions (general) discharge. She had not done anything wrong other than fail the APFT. Her work performance, for the 30 months she had been at Fort Riley, had always been excellent. She always did a good job even when she was not working in her military occupational specialty in Saudi Arabia. She has several counseling statements to prove this.

(2) The commander also said she had a negative attitude and she refused to change. She did not see how he came up with that conclusion when every single counseling statement she had is a positive one other than her weakness in the APFT.

i. A letter of support from Sergeant (SGT) R- D. C- states though the SGT was the applicant's first line supervisor she had not counseled the applicant or had any problems or complaints regarding the applicant having a negative attitude. The applicant was a very hard worker and followed all orders given to her with great accomplishment. She was dedicated to her work and accomplished all tasks in a timely manner. She had been a great asset. Physical training had been the only area of concern that the SGT encouraged her to be more positive in and wanted her to improve.

j. Letter from the storage section NCO in charge states her job performance had been nothing less than excellent. Her dedication to duties and her attitude toward the customers had greatly improved customer relations. She only needed to work on the APFT run. Her overall duty performance was excellent. The NCO hoped her discharge could be reconsidered from an under honorable conditions (general) to an honorable discharge.

k. Letter from the platoon SGT, states her job performance was outstanding. She did not have an attitude problem. She had been in the Army for over two years and was

still a PVT. She had seen her peers and friends being promoted and move ahead of her, but that had not stopped her from doing her work as a Soldier. The only problem she had was her APFT. She could not complete the run. She worked hard on improving her run, but could not pass the APFT. The platoon SGT felt she had served her country well and the recommendation of an under honorable conditions (general) discharge should be reconsidered.

l. On 20 March 1992, the appropriate approval authority approved her separation and issued her an under honorable conditions (general) discharge.

m. On 17 April 1992, the applicant was discharged accordingly. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged for unsatisfactory performance, under the provisions of chapter 13 of AR 635-200 and her character of service was under honorable conditions (general). She completed 3 years and 14 days of active duty service. She was assigned separation code was JHJ, and reentry code . She was awarded or authorized the: Army Service Ribbon, National Defense Service Medal, Southwest Asia Service Medal with 3 Bronze Service Stars, Kuwait Liberation Medal, and Marksman Marksmanship Badge with Rifle Bar.

5. The Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits an application to either the Army Discharge Review Board or the ABCMR requesting change in discharge.

6. Commanders could initiate separation action against Soldiers under Chapter 13, (Unsatisfactory Performance) when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

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's commander determined that the applicant's performance fell below standards as evidenced by his consecutive APFT failures, receipt of NJP, reductions, and displayed a negative attitude. As a result, his chain of command initiated separation action against her for unsatisfactory performance and she received a general, under honorable conditions discharge. The Board found no error or injustice in her separation processing. Additionally, although she provides a letter of support from a former SGM, the Board found such letter insufficient, and that a general discharge is appropriate in her case. 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. Chapter 13 provides:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments

- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

3. 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. 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. 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//