

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240002748

ON BEHALF OF THE APPLICANT, COUNSEL REQUESTS a change to the narrative reason on her DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect something less derogatory such as "Early Retirement" or "Secretarial Authority."

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Legal Brief with enclosures 1-15

Enclosure 1: DD Form 293

Enclosure 2: Power of Attorney

Enclosure 3: DD Form 214 (Certificate of Release or Discharge from Active Duty)

Enclosure 4: Affidavit

Enclosure 5: ROTC Record and Appointment

Enclosure 6: Officer Evaluation Reports (OERs) and Army Education Reports (AERs) dated between 1997 and 2014

Enclosures 7 and 8: Two (2) GOMORs

Enclosure 9: Fiscal Year (FY) 2012 LTC, Army, Promotion Selection Board

Enclosure 10: Board of Inquiry (BOI) Transcript (extract)

Enclosure 11: Office of The Assistant Secretary Manpower and Reserve Affairs Memorandum

Enclosure 12: Army Commendation Medal (ARCOM) certificate

Enclosure 13: Walden University diploma

Enclosure 14: Department of the Army Civilian Appraisals, dated between June 2019 thru May 2022

Enclosure 15: Under Secretary of Defense Memorandum

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. Counsel states:

a. The applicant served in the Army and the Louisiana Army National Guard from 1993 to 2014. Throughout most of her military career, the applicant received "outstanding" evaluations with strong recommendations for promotion. However, later in her career she received two reprimands that include one for disrespecting superior officers during a single counseling session, and one for adultery while deployed and for hitting the man she was alleged to have committed adultery with.

b. The applicant's first General Officer Memorandum of Reprimand (GOMOR) is based on a counselling session on May 4, 2011, which she was alleged to have disrespected a superior officer and spoken disrespectfully of another (another accusation, that she disrespected a different officer's wife, was struck out of the GOMOR). In her response, she did agree that her tone was out of line. She apologized, but denied some of the charges, and expressed her belief that they were retaliation for the Inspector General and Congressional complaints she filed. As may be seen by reviewing her OER, she performed her duties "splendidly" during this period.

c. Her second GOMOR is based on an alleged affair with a contractor in Iraq from December 2012 to January 2013, and for kicking and hitting him one time after the affair was over. The contractor later admitted that he made these allegations only after she reported him for supplying alcohol to others in violation of USCENTCOM General Order #1. Moreover, he admitted he would not have reported her if she had not reported him first. She denied the allegations and expressed her belief that they were retaliation for her reporting him for supplying alcohol in violation of his General Order #1. Nonetheless, she received a GOMOR. Again, she "performed well" in duties of high responsibility, but received low ratings based solely on these allegations.

d. In 2012, the Lieutenant Colonel selection board was considering the applicant when they saw the first GOMOR and voted that she should have to show cause for retention. On December 13, 2013, a Board of Inquiry (BOI) voted to separate her with a general discharge based on the allegations related to both GOMORs. The Army approved of the discharge but converted it to a non-regular retirement in lieu of elimination. The Army Grade Determination Review Board (AGDRB) determined that she had served honorably, and her DD Form 214 reflects such, as does her overall record. Meanwhile, the applicant had been transferred from the Chemical Corps to the Public Affairs Office (PAO) where she performed "exceptionally well" and continued to show strong potential.

e. The applicant received an honorable discharge, a glowing Officer Evaluation Report (OER) for her last year in service, and an end of service award. However, the narrative reason for discharge on her DD Form 214 is "unacceptable conduct." This serves no purpose and only discredits or stigmatizes her service. Since separating from the Army nine years ago, the applicant earned both a master's degree and a doctorate degree in Public Policy and Administration with a specialization in Homeland Security Policy. She completed both degrees while working full time for the Department of the Army as a civilian employee. She has advanced to the grade of GS-13 as a Logistics Management Specialist and hopes for further advancement based on her outstanding service.

f. The applicant's Army career, both before and after the accusations, consistently demonstrates a history of strong performances by a dedicated officer and civil servant. She had fourteen years of unblemished service as an officer before the first accusation and two more outstanding years after the second accusation. Her performance as a civilian with the Department of the Army demonstrates consistent good character and good judgment, and that she is not the kind of person whose record should be stained with "unacceptable conduct." The accusations against the applicant do not reflect her true character. The description of "unacceptable conduct" does not describe her service either serving in the Army or serving as a civilian in the Department of the Army.

3. Counsel provides:

a. Enclosure 1: DD Form 293

b. Enclosure 2: Power of Attorney, dated 30 June 2023, designates the applicant's the law firm of Tully Rinckey, PLLC to serve as her attorneys in all matters relating to and/or arising out of her service with the U.S. Army.

c. Enclosure 3: DD Form 214 reflects she was honorably released from active duty and transferred to the U.S. Army Reserve (Individual Ready Reserve) on 19 December 2014, under the provisions of AR 600-8-24 (Officer Transfers and Discharges), paragraphs 4-2b and 4-24a(1), unacceptable conduct, separation code BNC. She completed 6 years, 4 months, and 9 days of net active service this period; 10 years, 2 months, and 9 days of total prior active service; and, 5 years, 7 months, and 3 days of total prior inactive service. It also shows in Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Meritorious Service Medal
- Army Commendation Medal
- Army Achievement Medal
- National Defense Service Medal (2d award)
- Global War on Terrorism Expeditionary Medal

- Global War on Terrorism Service medal
- Korea Defense Service Medal
- Army Service Ribbon
- Armed Forces Reserve Medal w/M Device
- Parachute Badge

d. Enclosure 4: Affidavit, dated 31 October 2023, authored by the applicant, provides a summary of her military career from her days as an enlisted Soldier to the time she became a commissioned officer. The affidavit also includes her accomplishments throughout her military career, as well as post-service.

e. Enclosure 5: ROTC Record and Oath of Office, dated 15 May 1997

f. Enclosure 6: OERs and AERs (40 pages) from 1997 thru 2014

g. Enclosures 7 and 8: Two GOMORs as follows:

(1) GOMOR, dated 4 May 2011, which reflects she was reprimanded for disrespecting superior officers, and for using disrespectful language towards a spouse of a service member in a public forum in violation of Articles 91 and 133, Uniformed Code Of Military Justice (UCMJ). The applicant submitted a rebuttal to the GOMOR, which reflects that she apologized for her failure to maintain her composure and military bearing. She understood that her actions and manner were at all times subject to an elevated level of scrutiny. She did not intend disrespect, but she recognized that she was in the wrong treating the counseling session as a familiar discussion or argument, rather than a formal event and an opportunity to receive constructive criticism on her performance. She further provided points of explanation, not as an excuse for her behavior, but in an honest attempt to share her perspective and state of mind at the time.

a) During the 4 May counseling session, she admitted to lieutenant colonel (LTC) K that she was slightly upset that her OER was not more favorable.

b) She explained to LTC K that she did not feel supported by them, she felt like nothing she produced was ever good enough for them, and she never received any positive reinforcement.

c) She became increasingly upset during the session, because she felt like this was her first opportunity to speak about her frustrations, and speaking about them opened up a lot of emotions that she had kept repressed feeling that it was inappropriate or unprofessional to air her grievances.

d) With the benefit hindsight, she admitted that what was upsetting her had very little to do with comments on her OER, but was really more deeply rooted in the fact that she felt like this command never gave her a chance. She felt like she was written off from the start due to her conflict with LTC E nearly a year prior. She has always had good relationships with both her superiors and subordinates, so the fact that she felt constantly discriminated against and belittled by LTC E, really created a miserable working environment for her. As a result, she filed an Inspector General (IG), and eventually a Congressional complaint against her. Since that time, she really felt like she was labeled and judged as "that woman who filed a Congressional." She even received a GOMOR as a result. In particular she felt like colonel (COL) Rand LTC K wrote her off from the start, and that hurt.

(2) GOMOR, dated 12 February 2013, which reflects she was reprimanded for between on or about 21 December 2012 and 11 January, committing adultery with Mr. A.W., who was not her spouse, was a contractor employed by the Office of Security Cooperation. This behavior constitutes a violation of Article 134 of the UCMJ. Additionally, on or about 25 January 2013, in the Morale, Welfare, and Recreation center at the Embassy Military Attaché and Security Assistance Annex, she physically assaulted Mr. A.W. by striking him in the back with her fist and kicking him on his legs as he was walking out of the building. This behavior constitutes a violation of Article 128, UCMJ. The applicant submitted a rebuttal, which provides a detailed timeline of events that involved herself, Mr. A.W., Mr. K.S., Chief Warrant Officer Two (CW2) M-D, Ms. C., and Mr. A. that led to the misconception of an inappropriate relationship with or assault on Mr. W. In addition, she requested the GOMOR be withdrawn or placed in her local file instead of her Official Military Personnel File (OMPF).

h. Enclosure 9: FY12 LTC, Army, Promotion Selection Board recommendation that states, "after reviewing her overall record, a majority of the members of the board recommend that the aforementioned officer be required to show cause for retention on active duty or for elimination. This recommendation is in accordance with the provisions of AR 600-8-24."

i. Enclosure 10: BOI Transcript (extract) (9 pages), dated 13 December 2013, which contained the following findings and recommendation:

- The board has carefully considered all of the admitted evidence before it and finds that the applicant did engage in misconduct by behaving disrespectfully toward COL G.R. on 4 May 201 [sic]
- That the applicant did engage in misconduct by behaving disrespectfully toward LTC M.K. on 4 May 2011
- That the applicant did engage in misconduct by committing adultery with Mr. A.W. between on or about 21 December 2012 and 11 January 2013

- That the applicant did engage in misconduct by committing assault on Mr. A.W. on 25 January 2013
- In view of the findings, the board recommends that the applicant be separated from the U.S. Army with a General, Under Honorable Conditions Discharge

j. Enclosure 11: Office of The Assistant Secretary Manpower and Reserve Affairs Memorandum, dated 28 August 2014, Subject: Elimination Case, reflects that on 13 December 2013, a Board of Inquiry (BOI) recommended that the applicant be involuntarily eliminated from the U.S. Army based on misconduct and moral or professional dereliction, with a general under honorable conditions characterization of service.

k. Enclosure 12: ARCOM certificate, dated 19 December 2014, reflects the applicant was awarded for her exceptionally meritorious service as a Chemical Officer withing the operations and Mission Support, U.S. Army Sustainment Command.

l. Enclosure 13: Walden University diploma, which reflects the applicant was conferred the degree of Doctor of Philosophy in Public Policy and Administration on 10 May 2020.

m. Enclosure 14: Department of the Army Civilian Appraisals (39 pages), dated between June 2019 thru May 2022.

n. Enclosure 15: Undersecretary of Defense Memorandum, dated 25 July 2018, Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations.

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

a. On 15 May 1997, she took the Oath of Office as a Reserve Commissioned Officer.

b. The applicant received a GOMOR on 4 May 2011 for disrespecting superior officers, and for using disrespectful language towards a spouse of a service member in a public forum.

c. U.S. Army Human Resources Command memorandum, dated 7 December 2012, Subject: Initiation of Elimination, which reflects the applicant was notified that she had been identified by the FY12 LTC, Army, Promotion Selection Board to Show Cause for retention on active duty under the provisions of AR 600-8-24, paragraph 4-2(b), because of misconduct, moral or professional dereliction. Specifically, the substantiated activity resulting in the GOMOR, dated 3 November 2011, which was filed in her Official Military Personnel File (OMPF).

d. On 12 February 2013, she received a second GOMOR for committing adultery with Mr. A.W., who was not her spouse, a contractor employed by the Office of Security Cooperation.

e. Commanding General, U.S. Army Human Resources Command approved the FY12, Lieutenant Colonel, Army Promotion Selection Board's recommendation that the applicant be required to show cause for retention on active duty or for elimination.

f. U.S. Army Human Resources Command memorandum, dated 9 August 2013, Subject: Initiation of Elimination, which reflects the applicant was notified on 7 December 2012 that she was directed to show cause for retention on active duty. Since that time, additional derogatory information, not related to the first GOMOR, has been filed in your OMPF. As a result, the show cause for retention must be reinitiated, under Army Regulation (AR) 600-8-24. In addition, she was identified by the FY12 LTC, Army, Promotion Selection Board to Show Cause for retention on active duty under the provisions of AR 600-8-24, paragraph 4-2(b), because of misconduct, moral or professional dereliction.

g. The applicant read, understood and acknowledged receipt of the officer Elimination Initiation Memorandum recommending her involuntary separation from active duty. She elected not to submit a statement on her own behalf.

h. Headquarters, U.S. Army Sustainment Command memorandum, dated 2 October 2013, Subject: Notification to Appear Before a Board of Inquiry, reflects the applicant was informed that a BOI is scheduled to hold a hearing on 19 November 2013 at 0900 to determine whether or not she should be retained on active duty.

i. Board of Inquiry Findings and Recommendations Worksheet reflects the following:

- The respondent did engage in misconduct by behaving disrespectfully toward COL G.R. on 4 May 2011
- The respondent did engage in misconduct by behaving disrespectfully toward LTC M.K. on 4 May 2011
- The respondent did engage in misconduct by committing adultery with Mr. A.W. between on or about 21 December 2012 and 11 January 2013
- The respondent did engage in misconduct by committing assault on Mr. A.W. on 25 January 2013.
- RECOMMENDATIONS: In light of the above findings, the Board recommends the respondent be separated from active duty and receive a General, Under Honorable Conditions characterization of service

j. Office of The Assistant Secretary Manpower and Reserve Affairs (ASA-M&RA) memorandum, dated 28 August 2014, Subject: Officer Elimination Case, reflects the Deputy Assistant Secretary approved the Board's recommendations to eliminate the applicant from the U.S. Army based on misconduct and moral or professional dereliction (Army Regulation 600-8-24, paragraph 4-2b). Since the applicant is eligible for Non-Regular Retirement, a service characterization will not be provided per Army Regulation 600-8-24 paragraph 4-15b. This separation is converted to a Non-Regular Retirement in Lieu of Elimination by operation of 10 USC § 1186. Her case is referred to the Army Grade Determination Review Board for a recommendation as to the highest grade in which she served satisfactorily.

k. Office of The ASA-M&RA memorandum, dated 21 November 2014, Subject: Non-Regular Retirement Grade Determination Case (10 USC § 12731), states, "The Army Grade Determination Review Board reviewed the Retirement in Lieu of Elimination on the applicant. I direct she will be placed on the Reserve Retired List in the grade of O-3 (Captain). In regard to the calculation of her retired pay under the provisions of 10 USC §§ 1370 and 1407(f), I have determined her service in the grade of O-4 (Major) was not satisfactory.

l. U.S. Army Human Resources Command (Officer Retirements and Separations Branch) message, dated 24 November 2014, Subject: Non-Retirement in Lieu of Elimination / Non-Regular Retirement Grade Determination Case, states in paragraph 4, "the Deputy Assistant Secretary of the Army (DASA) approved her non-regular retirement in lieu of elimination, and she will be placed on the Reserve Retired List in the grade of O-3 (Captain) upon reaching retirement eligibility. SPD Code will be RNC with an honorable discharge in regard to the calculation of her retired pay under the provisions of 10 USC §§ 1370 and 1407(f)USA. The DASA determined her service in the grade of O-4 (Major) was not satisfactory.

m. The applicant was honorably released from active duty and transferred to the U.S. Army Reserve (Individual Ready Reserve) on 19 December 2014, under the provisions of AR 600-8-24, paragraphs 4-2b and 4-24a(1), unacceptable conduct, separation code BNC. She completed 6 years, 4 months, and 9 days of net active service this period; 10 years, 2 months, and 9 days of total prior active service; and, 5 years, 7 months, and 3 days of total prior inactive service.

5. AR 600-8-24, paragraph 4-2 (Reasons for elimination), states when one of the following or similar conditions exist, elimination action may be or will be initiated as indicated below for— (paragraph 4-2b) misconduct, moral or professional dereliction, or in the interest of national security.

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. After reviewing the application, all supporting documents, the evidence found within the military record and published DoD policy for consideration of discharge upgrade requests, the Board found that relief was warranted.
2. The Board carefully considered the applicant's, the military record, the frequency and nature of the alleged misconduct, the derogatory materials in her file, results of a show cause board, the final ARBA board decision for retirement in lieu of elimination and the reason for her separation from active duty as reflected on her DD Form 214. The Board considered the evidence she provided reflecting her post-service conduct, employee evaluations, academic achievements and letters of endorsement. The Board found that this evidence was sufficient to support a change to the applicant's record. Based on a preponderance of evidence, the Board determined that the applicant's reason for separation should be changed as a matter of clemency.

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 19 December 2014 to show in:

- item 26 (Separation Code): JFF
- 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. Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges), prescribes policies and procedures governing transfer and discharge of Army officer personnel.

a. Paragraph 4-2b states when one of the following or similar conditions exist, elimination action may be or will be initiated as indicated below for misconduct, moral or professional dereliction, or in the interest of national security.

- (1) Discreditable or intentional failure to meet personal financial obligations.
- (2) Mismanagement of personal affairs that are unfavorably affecting an officer's performance of duty.
- (3) Mismanagement of personal affairs to the discredit of the Army.
- (4) Intentional omission or misstatement of fact in official statements or records for the purpose of misrepresentation.

(5) Acts of personal misconduct (including but not limited to acts committed while in a drunken or drug intoxicated state).

(6) Homosexual conduct (see para 4–22).

(7) Intentional neglect of or failure to perform duties.

(8) Conduct unbecoming an officer.

(9) Conduct or actions that result in the loss of a professional status, such as withdrawal, suspension or abandonment of professional license, endorsement, or certification that is directly or indirectly connected with or is necessary for the performance of one's military duties. (For AMEDD officers, this includes the partial or complete suspension, limitations, withdrawal, or denial of clinical practice privileges.)

(10) The final denial or revocation of an officer's Secret security clearance by appropriate authorities acting pursuant to DODD 5200.2-R and AR 380-67.

(11) Unless precluded by paragraph 4–18d(4), elimination action will be initiated against an officer who is medically diagnosed as drug dependent or identified as having committed an act of personal misconduct involving drugs.

(12) Conduct or actions by a warrant officer resulting in a loss of special qualifications (such as withdrawal/revocation of CID accreditation, revocation of marine qualification license, removal from the PRP, withdrawal of clinical privileges or loss of flying status) that directly or indirectly precludes a warrant officer from performing in MOS and is necessary for the performance of those duties. Eliminations based on these reasons may not be utilized if reclassification action is feasible and in the best interest of the Service or if the loss of special qualifications was due to medical reasons beyond the control of the warrant officer.

(13) Failure to respond in a reasonable length of time to rehabilitation efforts regarding repeated acts of child/spouse maltreatment or abuse and/or other acts of family violence.

(14) Failure of a course at a service school by an RA officer because of misconduct, moral or professional dereliction. For failure by an RC officer, see paragraph 2–33.

(15) Conviction by court martial that did not impose a punitive discharge for a sexually violent offense listed in AR 27-10, chapter 24.

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 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. 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//