

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240003674

APPLICANT REQUESTS:

- upgrade of her under honorable conditions (general) discharge
- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect her service in Kuwait, from July 2003 to February 2004
- her last name as [REDACTED]
- appearance before the Board (in person)

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

- DD Form 149 (Application for Correction of Military Record)
- Birth Certificate
- Marriage Certificate
- Associate of Arts Degree with transcripts
- [REDACTED] Certificate

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 the circumstances leading to her discharge were over her taking a bus to a different camp on her day off. After she got reprimanded, she was allowed to take the bus to another camp. She was young and did not fight or argue about her discharge. She is a teacher and soon will be awarded her bachelor's degree.
3. On 13 November 2002, the applicant enlisted in the Regular Army for 3 years. Item 1 (Name (Last, First, Middle)) of her DD Form 4 (Enlistment Contract) shows her last name as [REDACTED]
4. A Defense Finance and Accounting Service (DFAS) foreign service verification email shows the applicant began service in Kuwait on 31 July 2003.

5. The applicant received formal counseling on 21 December 2003, for disobeying a lawful order. She left post without permission.
6. On 28 December 2003, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going absent without leave (AWOL) from on or about 20 December 2003, until on or about 21 December 2003; and disobeying a lawful order from her superior noncommissioned officer, on or about 20 December 2003. Her punishment included reduction to E-1, forfeiture of \$291.00 for one month, and 14 days restriction and extra duty.
7. The applicant received additional counseling on 14 January 2004, for disobeying a lawful order. She again left post without permission.
8. On 23 January 2004, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL on or about 14 January 2004, and remained absent until later that day. Her punishment included reduction, forfeiture of \$298.00, and 14 days restriction and extra duty.
9. On 10 February 2004, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
10. A DFAS foreign service verification email shows the applicant departed Kuwait on 18 February 2004.
11. On 31 March 2004, the applicant's commander notified her that she was initiating actions to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b, for a pattern of misconduct. As the specific reasons, the commander noted her NJPs for going AWOL.
12. The applicant acknowledged that she had been notified of her pending separation under the provisions of Army Regulation 635-200, Chapter 14-12b. However, the available record is void of a complete election of rights memorandum with the applicant's acknowledgement that she had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to her.
13. On 2 April 2004, the applicant's commander formally recommended her separation under the provisions of Army Regulation 635-200, paragraph 14-12b, prior to her expiration term of service.

14. Consistent with the chain of command's recommendation, the separation authority directed the applicant's discharge on 14 April 2004, with issuance of a General Discharge Certificate.

15. The applicant was discharged on 6 May 2004. Her DD Form 214 confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. Her service was characterized as under honorable conditions (general). She was assigned Separation Code JKA and Reentry Code 3. She completed 1 year, 5 months, and 24 days of net active service this period. She endorsed her DD Form 214 by signature with her last name as [REDACTED]

16. Additionally her DD Form 214 shows she was awarded or authorized the National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, and the Expert Marksmanship Qualification Badge with Rifle Bar.

17. The applicant provides:

a. A marriage certificate that shows she was married on [REDACTED], to [REDACTED]

b. College degree with transcripts and [REDACTED] Educator Certificate that detail her post service educational and professional accomplishments.

18. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, there is a reluctance to recommend that those records be changed.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Discharge upgrade: DENY. Based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigating evidence for the misconduct
- Foreign Service Credit: GRANT. Based upon the DFAS verification showing she deployed from 31 July 2003 to 18 February 2004.
- Name change on DD 214: DENY. Based upon the applicant's military service ending in 2004 and she getting married [REDACTED]. The guidance for preparing a DD Form 214 is to annotate correct information from the publication date. Future events have no barring on corrections.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

[REDACTED] [REDACTED] [REDACTED] GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by
 - Changing block 12f to read: 0000 06 19
 - Adding to block 18, SM served in Kuwait from 31 July 2003 to 18 February 2004
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to all other requested relief.

3/31/2025

 [REDACTED]CHAIRPERSON
[REDACTED]

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states 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.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management. It consolidates the policies, principles of support, and standards of service regarding processing personnel for transition. Paragraph 5-6r provides: for all Soldiers, list any/all outside the continental U.S. deployments completed during the period of the DD Form 214. Include the statement, "SERVICE IN (NAME OF COUNTRY DEPLOYED) FROM (inclusive dates)."

4. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

5. 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.

//NOTHING FOLLOWS//