

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240003887

APPLICANT REQUESTS: in effect, an upgrade of her under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim), 1 February 2024

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:

a. During her time in the military, her husband, at the time, sustained severe injuries in a car accident, rendering him unable to stay with her on post. Consequently, they decided to return home [REDACTED], where she assumed the role of his primary caretaker.

b. Her focus shifted to providing the care and support for her husband's recovery. She sought employment to alleviate the growing burden of bills. Regrettably, during this period, neither her unit or any representatives from the Army reached out to her to inquire about her well-being or the circumstances that led to her absence.

c. She was picked up by both local police and military police, revealing a communication breakdown that prevented her from clarifying her situation or seeking appropriate authorization for her extended absence.

d. Her departure was not a deliberate act of neglect of duty, but rather a response to an unforeseen and personal situation. She believes that her current discharge status does not accurately reflect the challenges she faced at the time.

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

a. She enlisted in the Regular Army on 12 June 1997.

b. Two DA Forms 4187 (Personnel Action) changed the applicant's duty status as follows:

- 18 December 1997 – present for duty (PDY) to absent without leave (AWOL)
- 17 January 1998 – AWOL to dropped from rolls

c. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 16 June 1998 for one specification of being AWOL from on or about 18 December 1997 until on or about 8 June 1998.

d. On 16 June 1998, the applicant consulted with legal counsel and requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant's rank was listed as specialist (SPC)/E-4. She acknowledged:

- she was making the request of her own free will
- maximum punishment
- she was guilty of at least one or more of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other conditions other than honorable
- she would be deprived of many or all Army benefits, she may be ineligible for many, or all benefits administered by the Veterans Administration,
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- she may expect to encounter substantial prejudice in civilian life
- she elected to submit a statement in support of her request

e. The applicant stated she enlisted on 12 June 1997, arrived Fort Bragg, N.C. on 12 November 1997. Her husband got in a car accident that evening. The police report she received was faulty. Her husband's name and birthdate were incorrect and the location of the vehicles did not coincide with how they looked. She was dealing with lawyers and insurance companies. She did not have transportation. Her husband was found guilty, they paid for the other driver's damages and were left with nothing. She told her chain of command that she wanted to get out of the service before 6 months;

but she was told it was no such thing. Her first sergeant told her not to bother going higher, she was a good Soldier, and he would not sign anything. She had an excellent background for a private. She was the squad leader for 2nd Squad, earned three battalion coins, a trophy, high physical training score and missed Soldier of the Month by one point.

d. On 18 November 1998, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. She would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

e. On 8 January 1999, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she completed 1 year, 1 month, and 5 days of active service with 172 days of lost time. She was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3. It also shows she was awarded or authorized the Army Service Ribbon.

4. 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.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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:

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 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 was charged with being absent without leave from 18 December 1997 to 8 June 1998, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error

or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

3/25/2025

X

CHAIRPERSON

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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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.

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//