

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240004193

APPLICANT REQUESTS:

- an upgrade of her under honorable conditions (General) discharge
- a personal appearance before the Board via video/telephone

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), 10 August 1982
- Letter from the Office of New York State and Local Retirement System (NYSLRS), 12 August 2022

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 she is retiring from her position within the NYSLRS, and they offer the ability to purchase service credits toward her pension. She received a general, under honorable conditions discharge; however, the NYSLRS only recognizes honorable discharges for eligibility to purchase service credits. Therefore, she is requesting that her discharge be upgraded to honorable.
3. The applicant provides a copy of a letter from the NYSLRS, dated 12 August 2022, which states her application was rejected because she did not receive an honorable discharge from the military, which makes her ineligible to purchase military service credit with NYSLRS.
4. A review of the applicant's service records show:
 - a. She enlisted in the Regular Army on 9 September 1981.

b. She was counseled for the following:

- 28 February 1982 – failure to report to Charge of Quarters (CQ).
- 16 June 1982 – missing 0530 formation.

c. DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows she was flagged on 12 July 1982 for pending chapter 5 separation.

d. A Statement of Option: Medical Examination for Separation/Retirement, dated 14 July 1982, which shows the applicant elected not to undergo a medical examination for separation. The applicant's medical records were reviewed under provisions of Army Regulation (AR) 40-501 (Standards of Medical Fitness), by the Medical Officer, and a determination was made that a medical examination for separation was not required.

e. On 26 July 1982, the applicant's immediate commander notified her of his intent to initiate separation actions against her under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program (EDP), and explained her rights. The commander listed the following reasons for the proposed separation: continued and willful marginal performance of duty, and apathetical attitude toward unit requirements.

f. On 27 July 1982, she acknowledged receipt of her commander's notification of her proposed discharge from the U.S. Army under the provisions of AR 635-200, paragraph 5-31. The applicant consulted with counsel and was advised of the basis of the contemplated separation and voluntarily consented to this discharge. She elected not to submit statements in her own behalf. She understood that she may expect to encounter substantial prejudice in civilian life if a general, under honorable conditions discharge was issued to her.

g. On 29 July 1982, the applicant's commander formally recommended approval of the separation under the provisions of AR 635-200, paragraph 5-31, with a general discharge.

h. On 5 August 1982, the separation authority approved the recommended discharge and directed the applicant be issued a DD Form 257A (General Discharge Certificate). He stated that the applicant would not be transferred to the Individual Ready Reserve.

i. The applicant was discharged on 10 August 1982. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, paragraph 5-31h, for failure to maintain acceptable standards for retention. Her service was characterized as under honorable conditions (general). She completed 11 months and 2 days of net active service this period. Her DD Form 214 also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and the Marksman Qualification Badge (hand grenade/rifle)
- Item 26 (Separation Code): JGH
- Item 27 (Reenlistment Code): RE-3

5. There is no indication the applicant applied to the ADRB for review of her discharge processing within that board's 15-year statute of limitations.

6. The Board should consider the applicant's statements and overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of her characterization of service. Upon review of the applicant's petition and available military records, the Board found the applicant's discharge did not hinder her from continuing to be a successful career woman in the State of New York as she is set to soon retire from the State Comptroller's office. The Board concluded based on the applicant's non-violent discharge, time elapsed, and successful career following discharge, relief was warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 10 August 1982 to show an honorable characterization of service.

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

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. Paragraph 5-31 provides for separating enlisted members under the expeditious discharge program (EDP). This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated when they have failed to respond to counseling (DA Form 4856, General Counseling Form). The criteria in section VIII, chapter 1, will govern whether the member will be released from active duty with transfer to the IRR, or be discharged. A discharge general, under honorable conditions is normally appropriate for a Soldier discharged under this chapter.

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

d. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

3. Army Regulation 635-5-1 (Separation Program Designators) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation code to be entered on the DD Form 214. It identifies the separation code "JGH" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 5-31, based on the Expeditious Discharge Program for failure to maintain acceptable standards for retention.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 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.

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.

5. 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.

//NOTHING FOLLOWS//