

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 December 2024

DOCKET NUMBER: AR20240004335

APPLICANT REQUESTS:

- upgrade of her characterization of service from under honorable conditions to honorable
- rank restoration from private/E-2 to private first class/E-3

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

- DD Form 149 (Application for Correction of Military Record), 28 December 2023
- self-authored statement
- reference statement, from [REDACTED]
- reference statement, from [REDACTED]

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, there are two injustices in her record which require attention. First, when she was demoted and did extra duty, she was supposed to get her rank restored; however, after 14 days of extra duty she learned she was being discharged. She believes she did not do anything wrong, and her paperwork is contradicting. Her Article 15 was a lie. She did not have sexual intercourse with a married man because [REDACTED] was not married until after they had met. When he went home to get married, his wife found out he was not a faithful husband. She states a lie is a lie and her rank was sabotaged due to [REDACTED] not being a married man. Additionally, she states she did not miss going to her appointed place of duty and she knows she did her duties, even when she was sick, which is why she is requesting an honorable discharge.

3. The applicant enlisted in the Regular Army on 17 June 1980, for a period of 4-years. She was awarded the military occupational specialty of 71L (Administrative Specialist). The highest rank she attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 12 July 1982 for wrongfully having sexual intercourse with [REDACTED] a married man who was not her husband and for failing to go to her prescribed appointed place of duty on or about 14 May 1982 to wit: extra training. Her punishment imposed was extra duty for 14 days, reduction to the grade of E-2, and forfeiture of \$158.00 for one month.
5. On 12 July 1982, the applicant's immediate commander notified the applicant that he was initiating action to separate her from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, under the Expeditious Discharge Program (EDP), with an under honorable conditions (general) discharge. As the specific reason for the proposed action, the commander noted her substandard attitude and job performance with no sign of improvement, the numerous counseling's, one Article 15, and her management of her personal affairs having resulted in a phone bill in excess of 8,000 Deutsche Mark. Additionally, she demonstrated poor attitude, lacked motivation, and lacked promotion potential. She refused to sign the form.
6. The available record is void of the applicant's election of rights showing that she consulted with counsel and was advised of the basis for the contemplated actions to separate her and of the rights available to her.
7. On 26 September 1982, the applicant's immediate commander recommended approval of her discharge under the provisions of AR 635-200, Chapter 5 (Separation for the Convenience of the Government), with issuance of an under honorable conditions (general) discharge. Further stating she had been counselled three times concerning her deficiencies, punished once under Article 15, and had no courts-martial convictions.
8. On the same date, the separation authority approved the recommended separation action and directed the issuance of a DD Form 256A (General Discharge Certificate). Additionally stating she would not be transferred to the Individual Ready Reserve.
9. The applicant was discharged accordingly on 27 October 1982, under the provisions of Army Regulation 635-200, paragraph 5-31h(2), for EDP failure to maintain acceptable standards for retention, in the grade of E-2. Her service was characterized as under honorable conditions (general). She completed 2 years, 4 months, and 11 days of net active service with no lost time.

10. She provides two reference statements from [REDACTED] and [REDACTED] who both summarize her as a great neighbor, someone who goes beyond to help a person in need, a woman of God, caring, kind, an excellent human being. She has raised her children and grandchildren, volunteered in her church and community, and is a hard worker in her position as a patient care technician in the cardiac intensive care unit.

11. Regulatory guidance states, individuals discharged under the EDP were issued either a general or honorable discharge characterization of service.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 separated for expeditious discharge program with the commander citing substandard job performance. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate. Additionally, the Board concluded the applicant was reduced from PFC to PV2 by nonjudicial punishment and there was insufficient evidence to support reinstating her rank to PFC, therefore, the Board denied relief.

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.

██████████

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. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

b. 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.

c. 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.

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/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.

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.

//NOTHING FOLLOWS//