

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240004409

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge
- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different last name
- correction of her DD Form 214 to show a different address

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) – Request for Change of Address/Cancellation of Direct Deposit
- Georgia Identification Card and Georgia Marriage License
- Certified Transcript of Birth State of New York

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 her expiration of term of service (ETS) from the Army was over 15th years ago and she feels that she should be eligible for benefits and/or disability. She suffers from alcoholism, post-traumatic stress disorder (PTSD), and bipolarism. She is currently enrolled in rehab, and she is trying to receive benefits.
3. The applicant provides:
 - a. VA Form 20-572 dated 15 December 2023, shows the applicant requested a change of address.

b. A Georgia ID and Georgia Marriage License shows the applicant's last changed from P__I to M__K.

c. A certified transcript of birth from the state of New York shows the applicant's personally identifiable information.

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

a. She enlisted in the Regular Army on 29 November 1983.

b. On 5 August 1986, court-martial charges were preferred on the applicant for:

- Specification 1, On or about 21 September 1985 and 15 October 1985, wrongfully use marijuana.
- Specification 2, On or about 29 October 1985, wrongfully distribute approximately one gram, more or less, of marijuana to sergeant first class J.B.
- Specification 3, On or about 1 November 1985, wrongfully distribute approximately 1.16 grams of marijuana to private second class A.T.
- Specification 4, On or about 1 November 1985, wrongfully distribute approximately 0.73 grams of marijuana to specialist four M.P.

c. On 15 August 1986, after consulting with legal counsel she requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). She acknowledged:

- maximum punishment
- she was guilty 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 than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- 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 may expect to encounter substantial prejudice in civilian life
- she understood that historically the percentage of discharges upgraded by the Discharge Review Board or the Army Board of Corrections of Military is very low

d. A review of the applicant's record shows, the chain of command recommends, the applicant's request for discharge in lieu of courts-martial and the applicant be issued an Under Other Than Honorable Conditions Discharge Certificate.

e. On 19 August 1986, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of courts-martial. She would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. Orders 184-652, dated 28 August 1986, discharged the applicant from active duty with an effective date of 8 September 1986.

g. On 8 September 1986, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she completed 2 years, 9 months, and 10 days of active service with no lost time. She was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Court-Martial," with reentry code 4. It also shows she was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal with 1 oak leaf cluster
- Marksman Marksmanship Qualification Badge with Rifle Bar (M16)

5. 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.

6. By regulation AR 635-8 (separation Processing and Documents) states when completing Block 1 of the DD Form 214, compare the original enlistment contract or appointment order, and review the official record for possible name changes. If a name change has occurred list other names of record in block 18.

7. By regulation (AR 635-200), 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her under other than honorable conditions (UOTHC) discharge. She contends she experienced an undiagnosed mental health condition, including PTSD, that mitigates her misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 29 November 1983.
- The applicant had court-martial charges preferred against her for wrongful use of marijuana and three specifications of wrongful distribution of marijuana. She requested discharge for the good of the service in lieu of court-martial, which was approved.
- The applicant was discharged on 8 September 1986 and completed 2 years, 9 months, and 10 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she suffers from alcoholism, PTSD, and Bipolar Disorder, and she indicated these as mitigating conditions to her misconduct. The application did not contain any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed the applicant was referred to the VA following an inpatient stay in December 2023. However, she did not respond to scheduling efforts.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed mental health condition, including PTSD, at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends she had a mental health condition or an experience that mitigated her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records, and medical documentation, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct. The Board found no in-service mitigating factors substantial enough to outweigh the offense of wrongful distribution of marijuana.

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2. The Board further noted that the applicant did not submit any documentation reflecting post-service accomplishments or character references that might support a clemency determination. Additionally, aside from her own statements, there is no evidence in the record indicating she experienced a behavioral health condition during her active-duty service. With regard to administrative matters, the Board found that the applicant's DD Form 214, dated 8 September 1986, correctly reflected her mailing address in accordance with regulatory guidance. Moreover, there is no evidence in either the applicant's submission or her official military records to justify a correction to her DD Form 214. The Board also noted that the applicant consistently used the contested name throughout her entire period of service. Based on the overall evidence and in the absence of substantiating documentation, the Board concluded that the merits of the case do not support a correction to the applicant's military records. Relief was therefore denied.

3. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed. The applicant is advised that a copy of this decisional document, along with her application and the supporting evidence she provided, will be filed in her official military records. This should serve to clarify any questions or confusion regarding the difference in the name and address recorded in her military records and to satisfy her desire to have her legal name and change of address documented in her military records.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XX	XXX	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.

X

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. By regulation (AR 635-8), currently in effect, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. When completing Block 1 of the DD Form 214, compare the original enlistment contract or appointment order, and review the official record for possible name changes. If a name change has occurred list other names of record in block 18.
3. 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. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10-6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40-501, chapter 8.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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//