

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240005198

APPLICANT REQUESTS:

- in effect, upgrade of her (General) under honorable conditions discharge and change narrative reason for separation from misconduct to hardship
- a personal appearance before the Board either in person or via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Support letter

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 noticed on her DD Form 214 (Certificate of Release or Discharge from Active Duty) she received a few months ago that her reason for separation was misconduct and she is confused, because she got out on hardship due to her mom not being able to care for her daughter any longer. She was not aware until recently that this was her separation reason. Her mother was also told that she would be getting a hardship discharge, so she too was very confused. She requested her DD Form 214 because her and her husband are trying to buy a house. She is a business owner, wife, and mother.

a. She was very young when she went into the Army, and she made some mistakes. She got sick in basic, but she kept pushing through. She went thru depression at Walter Reed and was taking meds to sleep. She was not perfect, but she did not deserve a misconduct separation.

b. They did not put her out she asked to leave to get back to her daughter because her mom could not see about her any longer. She is just hoping can get an upgrade and a chance to purchase her home. If she knew then what she knows now she would have been retiring from the military not asking for sympathy, but she truly believes she was being discharged under a hardship or she would have never gotten out.

3. The applicant enlisted in the Regular Army on 7 October 1994.

4. She received non-judicial punishment on 5 October 1995, for:

- without authority, fail to go at the time prescribed to her appointed place of duty; willfully disobey an order which it was her duty to obey; and unlawfully strike another Soldier in the facial area with an open hand
- She was reduced to private/E-1 (suspended to be automatically remitted if not vacated before 30 November 1995)

5. She underwent a separation physical on 9 November 1995, and was found qualified for separation.

6. On 27 November 1995, she underwent a mental evaluation which revealed no diagnosis. She has the mental capacity to understand and participate in the proceedings.

7. On 29 November 1995, her suspended punishment of reduction to private/E-1 was vacated due to on or about 25 November 1995, willfully and unlawfully alter a public record (Individual Sick Slip), dated 25 November 1995.

8. On 15 December 1995, her commander notified the applicant of her intent to separate her for Pattern of Misconduct. The reason for her proposed action were: on 5 October 1995, she received a Company Grade Article 15 for an assault, and for disobeying an order. On 25 November 1995, she willfully and unlawfully altered a public record. This misconduct resulted in a vacation of her suspended reduction. From 20 June 1995 to 7 November 1995, she received numerous disciplinary counseling statements. These negative counseling statements resulted from: five violations of failure to be at her appointed place of duty, four violations of failure to provide proper care for her family member, three violations of making false statements, three violations of failure to follow direct orders, two violation of barracks' policy, and one violation of disrespecting a noncommissioned officer. This type of behavior shows a pattern of misconduct and will not be tolerated. She acknowledged the same day.

9. On 18 December 1995, having been advised by consulting counsel of the basis for the contemplated action to separate her for a pattern of misconduct, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted

Personnel), chapter 14, and its effects; of the rights available to her; and the effect of any action taken by her in waiving her rights. She understood she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to her. She submitted a conditional waiver request contingent upon her receiving a characterization of service or description of separation no less favorable than under honorable conditions otherwise referred to as a "General" discharge.

10. Her chain of command recommended that she be separated prior to the expiration of her current term of service under the provisions of AR 635-200, paragraph 14-12b with a general, under honorable conditions discharge.

11. On 17 January 1996, the separation authority approved separation under the provisions of AR 635-200, paragraph 14-12b for pattern of misconduct. He directed that she receives a general discharge.

12. Accordingly, she was discharged on 26 January 1996, under honorable conditions (general). Her DD Form 214 shows she completed 1 year, 3 months, and 20 days net active service this period. It also shows: in Item 25 (Separation Authority): AR 635-200, paragraph 14-12b; Item 26 (Separation Code): JKA; Item 27 (Reentry Code): 3; and Item 28 (Narrative Reason for Separation): Misconduct

13. There is no evidence the applicant applied to the Army Discharge Review Board within the Board's 15-year statute of limitations.

14. By regulation, AR 15-185 (ABCMR) 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.

15. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse.

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

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 DoD guidance for liberal consideration of discharge upgrade requests. The Board found no evidence the applicant qualified for or requested a hardship discharge. The evidence shows the applicant displayed a pattern of misconduct (Article 15 for assault, disobeying an order; and unlawfully altered a public record; and several disciplinary counseling statements). As a result, her chain of command initiated separation action against her. She was discharged with an under honorable conditions characterization of service. The Board found no error or injustice in her separation processing. Also, although she provides a letter of support from her mother, the Board found such letter insufficient and does not outweigh her misconduct. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Patterns of Misconduct) deals with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such

characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Paragraph 6-3, states that Soldiers of the Active Army and the Reserve Components may be discharged or released because of genuine dependency or hardship. The regulation provides that hardship exists when, in circumstances not involving death or disability of a member of a Soldier's (or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship. Under this provision for hardship discharge, parenthood of married service women and sole parenthood are the two conditions under which separation may be granted.

e. Paragraph 14-12b a pattern of misconduct consisting of (1) Discreditable involvement with civil or military authorities. (2) Conduct prejudicial to good order and discipline. Discredit able conduct and conduct prejudicial to good order, and discipline includes conduct violative of the accepted standards, of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

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. 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. 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//