

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240006263

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions character of service.

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)
- Two character references

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. On 6 November 1996, the applicant enlisted in the Regular Army. She did not complete initial entry training, and she was not awarded a military occupational specialty.
3. On 24 January 1997, the applicant's duty status changed from present for duty to absent without leave (AWOL). On 4 April 1997, her duty status was changed from dropped from rolls to present for duty. The DA Form 4187 (Personnel Action) documenting the change in duty status shows the applicant had been apprehended by civilian authorities on 4 April 1997 and returned to military control the same date.
4. A DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL from on or about 24 January 1997 through 4 April 1997.
5. In an undated memorandum, subject: Admission of AWOL for Administrative Purposes, the applicant declared that she had been advised by her defense counsel that at the present time the government had not received the necessary documentation and/or records with which to obtain a conviction by court-martial. Knowing this to be

true, she waived all defenses that may have become known had her defense counsel been able to review her records. She knowingly, willingly, and voluntarily declared that she was AWOL from 24 January 1997 to 4 April 1997. She made the admission for administrative purposes only so she could process out of the Army and realized in doing so she could be given an under other than honorable conditions discharge.

6. On 18 April 1997, the applicant voluntarily requested discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In her request, she acknowledged:

- She was making the request of her own free will and had not been subjected to any coercion whatsoever by any person
- By submitting the request she was acknowledging she was guilty of the charge against her or a lesser included offense which authorizes the imposition of a bad conduct or dishonorable discharge
- She had been afforded the opportunity to consult with appointed counsel
- If her request was accepted, she may be discharged under conditions other than honorable and be furnished an Under Other Than Honorable Discharge Certificate
- She had been advised and understood the possible effects of an other than honorable discharge and that as a result of the issuance of such a discharge she would be deprived of many or all Army benefits and may be ineligible for many or all benefits administered by the Veterans Administration and she may be deprived of her rights and benefits as a veteran under both Federal and State law
- She would not submit statements in her own behalf

7. On 12 June 1997, her commander recommended approval of her request for discharge in lieu of trial by court-martial with service characterized as under other than honorable conditions.

8. On 27 June 1997, the separation authority approved the applicant's request and directed her service be characterized as under other than honorable conditions.

9. On 24 July 1997, the applicant was discharged. She completed 6 months and 9 days of net active service this period. Her DD Form 214 shows in:

- Block 24 (Character of Service) – under other than honorable conditions
- Block 25 (Separation Authority) – Army Regulation 635-200, chapter 10
- Block 28 (Narrative Reason for Separation) – in lieu of trial by court-martial
- Block 29 (Dates of Time Lost) – 24 January 1997 – 3 April 1997

10. The applicant provides character references from a Senior Pastor and a family friend. The character references are available in their entirety for the Board's review.

11. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, she consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade request, the Board found relief was not warranted.

2. The Board carefully considered the applicant’s contentions, her record and length of service, the frequency and nature of her misconduct, her apprehension while AWOL, the charge against her, her request for discharge, the reason for her separation and the character of service she received. The Board did not find evidence in the record of mitigation for the misconduct and the applicant provided none. The Board considered the character references but found that the applicant did not provide evidence of post-service achievements to support a clemency consideration. Based on a preponderance of evidence, the Board determined that the applicant’s character of service was not in error or unjust and that there was insufficient evidence provided to warrant a discharge upgrade as a matter of clemency.

**BOARD VOTE:**

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

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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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have

included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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//