

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240006399

APPLICANT REQUESTS: an upgrade of her general under honorable conditions discharge to honorable.

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)
- National Center for Competency Testing
- Personal statement

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, via personal statement, in effect:

a. She was discharged just four days before her expiration of term of service (ETS). She had been in the unit temporarily while waiting for her school dates. She had extended and reenlisted through the Army Bonus, Extension, and Retraining (BEARS) program and would have reenlisted in her new military occupational specialty (MOS) after completing school, as her current MOS was phasing out (21L). She entered the new unit as a promotable specialist (SPC), but within less than a year, she had been reduced to private (PVT)/E-1, sexually harassed by her squad leader while training at the Pohakuloa Training Area, and subsequently chaptered out.

b. The other noncommissioned officers (NCOs) in her unit were advised not to intervene or even speak to her during the process, or they would suffer the same consequences. She had no one to talk to or seek advice from. Her first sergeant (1SG) personally walked her through the entire discharge process.

c. She went to her sergeant major (SGM) at the 8th Military Police Brigade, asking to be relocated due to retaliation following her Sexual Harassment/Assault Response and Prevention (SHARP) complaint. He agreed and said she would be changing units. However, she alleges her 1SG spoke to the SGM afterward and returned to tell her, "Your ass isn't going anywhere; I'm going to show your ass who's boss around here." All of her counseling statements were dismissed as irrelevant, and even the Article 15 she received was unjustified. She also made Inspector General (IG) complaints during this time.

d. She was advised to wait and fight the discharge in a court martial but faced the risk of jail time if found guilty, where she would remain until her chapter was complete. Her husband was returning home from Afghanistan during this time, leaving her both scared and confused, so she rejected the court martial offer. She served honorably and was a dedicated Soldier. Now a nurse in Texas at Baylor Scott & White Health, she wants to return to school to further her education. However, due to her discharge, she does not qualify for education benefits.

3. The applicant provides:

a. DD Form 214 which reflects she was discharged on 16 July 2008 under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, pattern of misconduct, separation code JKA, reentry code 3, and character of service of general under honorable conditions. She served 2 years, 11 months, and 26 days of net active service this period.

b. National Center for Competency Testing reflects the title of National Certified Medical Assistant was bestowed on the applicant, with an expiration date of 13 March 2025.

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

a. She enlisted in the Regular Army on 21 July 2005 for a period of three (3) years.

b. DA Form 4187 (Personnel Action), dated 14 December 2006, reflects the applicant requested a name change to "Al\_\_-Fi\_\_\_, Na\_\_\_," with an effective date of 14 December 2006.

c. On 25 June 2008, the applicant's immediate commander notified the applicant of her intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12b, for patterns of misconduct. Specifically, on two different occasions, she failed to go at the time prescribed to her appointed place of duty; on two different occasions she disrespected and disobeyed noncommissioned officers; on or about 19 November

2007, she disobeyed a lawful order from a commissioned officer; and on or about 30 May 2008, she made a false official statement to staff sergeant (SSG) R.

d. The applicant acknowledged receipt of the commander's intent to separate her. On 25 June 2008, she consulted with legal counsel who advised her of the basis for the contemplated separation action for misconduct, the type of discharge she could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to her. She elected not to submit a statement in her own behalf. She acknowledged that she:

- understood she could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to her
- understood she could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if she received a discharge characterization of less than honorable, she could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but she understood that an act of consideration by either board did not imply her discharge would be upgraded

e. Subsequent to this acknowledgement and consultation with counsel, her immediate commander initiated separation action against her due to a pattern of misconduct, in accordance with AR 635-200, chapter 14-12b. Her chain of command recommended approval.

f. On 27 June 2008, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 14-12b, patterns of misconduct, with her service characterized as general under honorable conditions.

g. As previously stated in paragraph 3a, her DD Form 214 shows she was discharged on 16 July 2008 under the provisions of AR 635-200, paragraph 14-12b, pattern of misconduct, separation code JKA, reentry code 3, and character of service of general under honorable conditions. She served 2 years, 11 months, and 26 days of net active service this period.

4. A request for redacted Reports of Investigations (ROIs) and Military Police Reports was submitted to the U.S. Army Criminal Investigation Command; however, as of the date of this writing, this agency has not received one.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for an update of her discharge.

6. AR 635-200 states action will be taken to separate a member for a pattern of misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

7. AR 635-5 (Separation Documents) prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty).

8. The Board should consider the applicant’s petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. Based upon the pattern of misconduct leading to the applicant’s separation and the lack of mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

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

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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. Paragraph 3-7b states 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 14, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable

conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

//NOTHING FOLLOWS//