

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240008011

APPLICANT REQUESTS: an upgrade of her under other than 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)
- NJ State Department of Health Certificate of Marriage
- Headquarters, U.S. Armor Center and Fort Knox orders 013-0178
- Linden Family Medical Associates letter
- Medical documents

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 affidavit:

a. When this incident occurred, she was just 20 years old. At the time, she was pregnant while on leave and faced the devastating loss of her father. In the midst of her grief and pregnancy, she made a mistake that she deeply regrets. Her state of mind was fragile, and she was struggling to cope with the stress of being deployed across the country while expecting her first child.

b. She acknowledges that she was not in a position to perform her duties to the best of her ability, both physically and mentally. After her father's passing, her mother needed her support, and she felt overwhelmed by the responsibilities of caring for her loved ones while also dealing with her own emotional turmoil.

c. She is graduating from nursing school and is concerned that this past incident may impact her ability to obtain a nursing license. She is eager to move forward and

give back to her community, but she is also aware that this incident may be seen as a liability. She hopes that consideration will be given to her circumstances at the time and that an upgrade in her status will be granted.

d. Throughout this process, she has reflected on her actions and has come to realize that she was simply a young woman who made a mistake in a difficult situation. She has grown and matured since then, and she is committed to making a positive contribution to her profession and her community.

3. The applicant provides:

a. DD Form 214 reflects the applicant was discharged on 20 January 1998, under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of court-martial, separation code of KFS, reentry code 3, and a character of service as under other than honorable conditions. She completed 7 months and 6 days of net active service this period and lost time from 7 May 1997 thru 17 September 1997. It also shows the following:

- Item 4a (Grade, Rate or Rank): PVT
- Item 4b (Pay Grade): E1
- Item 12h (Effective Date of Pay Grade): 31 January 1997

b. NJ State Department of Health Certificate of Marriage reflect was married on 27 September 1998, which accounts for the change to the applicant's last name.

c. Headquarters, U.S. Armor Center and Fort Knox orders 013-0178, dated 13 January 1998, reflects the applicant was reassigned to the U.S. Army Transition Center Fort Knox, with a reporting date of 20 January 1998.

d. Linden Family Medical Associates letter, dated 28 March 1997, outlines the applicant's father's multiple chronic diseases, which is why it would behoove if the applicant was stationed closer. This letter was submitted at the time the applicant was being processed for separation.

e. Medical documents (3 pages) that includes results from blood work that was taken.

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

a. She enlisted in the Regular Army on 31 January 1997.

b. Her duty status changed from Present for Duty (PDY) to Absent Without Leave (AWOL), effective 7 May 1997.

c. DD Form 616 (Report of Return of Absentee) which reflects the applicant was surrendered to military authorities at Fort Monmouth, New Jersey on 18 September 1997.

d. DD Form 458 (Charge Sheet), dated 19 September 1997, court-martial charges were preferred against the applicant for one specification of being AWOL from 7 May 1997 to 18 September 1997.

e. On 22 September 1997, the applicant consulted with legal counsel. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to her. Subsequent to receiving legal counsel, she voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of trial by court-martial. In her request for discharge, she acknowledged her understanding that:

- by requesting discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of an undesirable discharge
- she acknowledged he understood that if her discharge request was approved she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Veterans Administration, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws
- she was advised he could submit any statements she desired in his own behalf; she did not submit any statements

f. The separation authority approved the applicant's request for discharge on 7 December 1997, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and discharged under other than honorable conditions.

g. As previously stated in paragraph 3a, the applicant was discharged on 20 January 1998, under the provisions of AR 635-200, chapter 10, in lieu of court-martial. She completed 7 months and 6 days of net active service this period and lost time from 7 May 1997 thru 17 September 1997. It also shows in:

- Items 4a (Grade, Rate or rank) and 4b (Pay Grade) show PV1/E-1
- Item 12h (Effective Date of Pay Grade) – 31 January 1997
- Item 26 (Separation Code) - KFS
- Item 27 (Reentry Code) - 3
- Item 28 (Narrative Reason for Separation) - In Lieu of Trial by Court-Martial

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of her discharge within the board's 15 year statute of limitations.

6. By regulation, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally considered appropriate.

7. In reaching its determination, the Board can 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to misconduct leading to the applicant's separation, 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, 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), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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 provides that 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or

general discharge is authorized, a discharge under other than honorable conditions is 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/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 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. 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//