

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240010807

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record).

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 would like her discharge to reflect an honorable discharge. It currently states general, under honorable conditions and she believes a correction is warranted. She was sexually harassed by a captain and several sergeants. She was told to follow the direction of the people around her and to keep her mouth shut. Additionally, she was informed, someone new would come along and the men in the unit would move on to that person. She was discharged from the service because of a relationship forced on her. She informed her attorney, and he advised her that saying something about it would not make a difference. She further noted if she is forced to tell her story again in order to get justice, she will.
3. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 13 September 1989.
  - b. Her DA Form 2-1 (Personnel Qualification Record) shows she served in Saudi Arabia from 29 August 1990 to 24 March 1991.
  - c. On 6 February 1992, a DA Form 1574 (Report of Proceedings by

Investigating Officer (IO)/Board of Officers) was initiated against the applicant and her commander, Captain (CPT/03) MK, for fraternization.

d. The appropriate administrative or disciplinary action recommended by the IO included the following:

- a formal letter of reprimand be placed in CPT MK's official military personnel file (OMPF) and nonjudicial punishment against both for fraternization (Article 134) and false swearing (Article 107)
- the applicant be barred from reenlistment and highly considered for release from active duty
- CPT MK be relieved from command and revocation of security clearance
- both be reassigned
- CPT MK and his family seek marital support counseling as soon as possible

e. On 15 July 1992, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows there was no evidence of mental disorder of sufficient severity to warrant disposition through military medical channels. She was psychiatrically cleared for administrative separation or judicial action deemed appropriate by the command.

f. The applicant's Standard Form 88 (Report of Medical Examination), dated 28 July 1992, for the purpose of separation indicated she was generally in good health. She was marked qualified for chapter.

g. On 17 September 1992, the applicant's immediate commander, CPT WH, notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c. The reason for his proposed action was based on evidence found during an AR 15-6 investigation incriminating her with adultery and making false statements. The applicant acknowledged receipt of the letter of notification on 21 September 1992.

h. After consultation with legal counsel, she acknowledged the rights available to her and requested consideration of her case before a board of officers. Furthermore, she elected not to submit a conditional waiver of that right.

i. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. The commander recommended an under honorable conditions, general discharge. The intermediate commanders recommended approval.

j. On 23 September 1992, the applicant's trial defense attorney submitted a statement on her behalf. The memorandum shows the company commander initiated

administrative elimination under AR 635-200, paragraph 14-12b. The concern at the time of rebuttal was that the applicant did not have a pattern of misconduct. According to the unit personnel, the command agreed with the position and subsequently was notified of an elimination action under AR 635-200, paragraph 14-12c. She objects to the initiation of this action because it constitutes "administrative double jeopardy". Fairness and the regulation demand the action be withdrawn. Additionally,

(1) AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 1-19b (3) provides that a soldier cannot be separated from service for actions that have already "been the subject of an administrative separation proceeding resulting in a determination by a separation authority that the soldier should be retained."

(2) The decision to reject the Chapter 14-12b packet was a determination that under Chapter 14-12b the soldier must be retained because the evidence was insufficient to warrant separation under Chapter 14-12b. Reinitiation of this action under Chapter 14-12c is a violation of Paragraph 1-19.

(3) Fairness weighs in favor of the Soldier in this case. The applicant fought one elimination action and it was unfair to make her fight another one because the unit command made a mistake the first time.

k. On 25 September 1992, the separation authority determined the applicant's rebuttal memorandum should be provided to the Company Commander within 7 working days for consideration.

l. A rebuttal statement from the applicant dated 5 October 1992, indicates she felt the subsequent chapter action was a violation of her rights. She sincerely and aggressively fought the chapter action for 4 months, and tried to prove her worthiness in the army for 9 months, since the conclusion of the AR 15-6 investigation. She felt, she proved her worth, commitment, and dedication to the service. Neither her present commander nor battalion commander were in command during the investigation. Her old battalion commander was going to have her barred and given a second chance. Once the new chain of command was in place, they decided to chapter her. Since the investigation, she has worked in critical positions and all of her supervisors' value her work. She felt justice and her entire military career warranted an honorable discharge. If released from the Army with a general discharge, her education benefits would be taken away. Being released for misconduct would hinder her chances of success in the civilian world. She further noted CPT K was allowed to resign and leave the Army with no adverse action taken against him. No mention of misconduct was applied to the officer involved, and she believes she should have had the same treatment. Her entire military career is based on one isolated incident. Prior to this incident, there was no adverse actions against her. Though the previous commander barred her from reenlistment, she would still have the opportunity to prove she deserved the GI Bill and

further serve in the U.S. Army. Her desire was to be given the opportunity to rehabilitate and a chance to overcome the bar to reenlist, however, she still thinks she should have an honorable discharge.

m. On 20 October 1992, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12, for commission of a serious offense. He further directed the applicant be furnished a general, under honorable conditions discharge.

n. On 30 December 1992, she was discharged from active duty with a general, under honorable conditions (General) characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 3 years, 3 months, and 18 days of active service. She was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Commission of A Serious Offense)," with reentry code 3. It also shows she was awarded or authorized:

- Army Service Ribbon
- Army Achievement Medal
- National Defense Service Medal
- Southwest Asia Service Medal with 2 bronze Service Stars
- Kuwait Liberation Medal
- Marksman Marksmanship Qualification Badge (Rifle)
- Army Lapel Button

4. A review of the applicant's record confirms an administrative entry was not recorded on her DD Form 214. The entry will be added to her DD Form 214 as an administrative correction and will not be considered by the Board.

5. On 23 May 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding sexual assault/harassment and no records were found.

6. 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.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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

### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a minority of the Board determined the applicant's characterization of service should not be upgraded, and a majority of the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct under the provisions of Army Regulation 635-200, chapter 14-12c (Commission of a Serious Offense). The majority of the Board noted a lack of counseling and NJP from the applicant's immediate commander to support his initiation of separation. The majority of the Board determined the discharge and the characterization of service the applicant received upon separation was inequitable and therefore determined her characterization of service should be upgraded to honorable.
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.
3. This case contains administrative corrections on the applicant's DD Form 214 ending on 30 December 1992 as identified in the "administrative notes" section of the ROP.

### BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that the applicant's DD Form 214 ending on 30 December 1992 be amended by changing her characterization of service to Honorable.
2. This case contains administrative corrections on the applicant's DD Form 214 ending on 30 December 1992 as identified in the "administrative notes" section of the ROP.

//Signed//

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows her DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in Item 18 the entry "Duty in Imminent Danger Pay Area (Southwest Asia) service in Saudi Arabia from 29 August 1990 to 24 March 1991."

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 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. 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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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.

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//