

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 July 2023

DOCKET NUMBER: AR20230000299

APPLICANT REQUESTS: upgrade of her under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- College Transcripts
- Privacy Act Release Form (PARF)
- Email GH__
- ARBA Letter
- Photographs

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 issues/conditions related to the applicant's request are post-traumatic stress disorder (PTSD), sexual assault/harassment. The applicant states the Department of Veterans Affairs (DVA) claim that she had less than 24 months of active service. She has not received any benefits and she is requesting any assistance to be deemed eligible. She had no intentions of getting out early and had no choice. She had no support from the Army to assist her in her crisis. She is a patriot. Her dream was to join the Army and serve her country. She has raised her children without assistance and went back to college. She has attempted to go back into the Army and cannot be due to the discharge she has. She actively volunteers at college VA centers to assist student veterans so she is supporting any way she can. It is important to be cleared of a discharge she feels was unfair. She is supported by the women's veteran alliance and actively participates.
3. The applicant provides a self-authored statement which states why she was diagnosed with PTSD. She provides examples of sexual and racial harassment at Fort

Stewart, the living conditions, and an unresponsive command. She was the only Caucasian person in her entire unit, she was called "white girl" instead of her name. She lived on the 3rd floor of the barracks with a single, very narrow, exterior staircase and nearly every day she was not permitted to pass without being blocked from a male Soldier making an advance. In another incidence she had two buckets of filthy soapy water poured over her from men in the parking lot washing their cars. She did not get her mail, while she noticed that others did. When she demanded answers as to where my mail was (family told me what was being sent) she was finally given about two months' worth of mail, there was no answer as to why her mail was held. This included packages with baked goods that was molded and held over a month.

a. In addition, there was required drug testing at the motor-pool where she worked and while it was supposed to be a random draw, she was nearly always chosen. This required her to urinate in front of an African American female sergeant to the point where she had to see the urine leave her body. She did at least 20 of these drug tests. She believes it was because she was the only one not smoking marijuana. She was the clean test they could count on during each test schedule. For her, this was humiliating as she is a private person, and urinating in-front of this officer that berated and harassed her on a regular basis gave her severe anxiety and she felt extremely uncomfortable taking her pants down while she was in a small bathroom stall with her.

b. She further sites examples of blatant bullying, hypervigilance, and anxiety while in her unit. She accepts she had to follow procedures such as cleaning up and random drug testing, however, this was blatant bullying and caused her severe anxiety. She never felt safe living in the barracks and would never rest, which left her in a state of hypervigilance. The smoking in her room and constant blaring of loud music meant she had not one night of peaceful sleep. All these things were reported.

c. While stationed at Fort Stewart, she got married to an 82nd Airborne Soldier stationed at Fort Bragg, NC, and became pregnant with twins. She completed the required paperwork three times to transfer and move with her husband who had their Basic Allowance for Housing (BAH) and a townhouse off base in NC. She was driving nine hours every weekend to see him at Fort Bragg. She could not believe the complete difference at Fort Bragg. The housing, Soldiers, command, and order was what she thought her experience would be like in the Army. At Fort Stewart, each time she completed her paperwork and waited, she would not hear back about transferring. They acted completely clueless as to how she would transfer. After the third time she was told her paperwork could not be found, her husband drove from Fort Bragg to Fort Stewart and took her back to Fort Bragg and they would do the paperwork there. She was scared, but fully intending to follow all Army procedures. She did not know what to do but knew her safety should be the priority. Her husband demanded she leave with him, and she notified her first sergeant that she was going to Fort Bragg to follow transfer

procedures there. When she did this, she didn't realize she would be absent without leave (AWOL).

d. When she got to Fort Bragg, her husband was called into his command office for harboring an AWOL Soldier. In the office, they used a knife and cut his rank off his uniform, which was devastating. She was pregnant with twins and was no longer receiving a wage from the Army, and now her husband was reduced to a private/E-1 pay grade. At home, things became extremely volatile due to financial stress, and her husband began showing extremely abusive behaviors. He started to miss work because he was upset about being demoted and his rank removed. His commander came by their home off base twice, but her husband would not answer the door. He began to get more violent and on one evening he pushed her on her chest so hard, she landed on her back, and he climbed on top of her and put his hands over her mouth and nose. He was so heavy, and she was pinned to the kitchen floor and couldn't get him off her. She began to lose consciousness and knew without a doubt, she was going to die. That is a panic, a terror, she will never forget, and she still lives with PTSD from her experiences in the Army.

e. That evening, the neighbors called the police. Her husband fled into the woods behind our house, and she was taken to the hospital. That evening, he returned to the home with other enlisted Soldiers and cleared the townhome of all their belongings. He took food out of the fridge and put everything into garbage bags. He then fled to his parents in PN, to avoid arrest as there was a warrant out for his arrest. When she returned to the home, she found it empty, there was no furniture, food, blankets, or anything. She slept on the floor, for three nights, feeling very unwell. At no time, after this domestic violence incident did, she receive any help whatsoever from the US Army. She was so hungry and sick; she called her parents in CA for help. They sent her gas money and told her to drive to AL where she had distant family. She stayed in AL until her mother flew out to get me and we drove back to CA. When she got to CA, she went into preterm labor at 23 weeks, and it was discovered that part of her son's placenta was detached. He was born with hemi spastic Cerebral palsy that effects his left side. They believed the placenta was detached when she was pushed to the floor during the domestic violence incident. The twins are 20 years old now. She raised them 100% on her own, with no contact with her ex-husband.

f. She applied and was denied having her discharge upgraded from "other than honorable" to "honorable" which is what she is requesting. She appealed and flew to Crystal City in Washington DC to go before the discharge review board and explained her PTSD diagnosis, the sexual and racial harassment at Fort Stewart, the living conditions, and that she had no intention of ever going AWOL. It was her dream to have a career in the Army. The discharge review board denied her request. She believes they misinterpreted the dates she gave, as the female board member said to her "it's very rare that a mother doesn't know her own children's birth date". She was very confused

by this statement. Her due date was 21 February 2002, but the twins were born prematurely on 6 November 2001.

g. She applied and tried to receive Veterans Administration (VA) benefits for her PTSD and an orthopedic issue that occurred in training and was denied based off her discharge status. She also requested all medical records and was sent a few pages of hers, but it was mostly the records of an unknown male Soldier. She has mailed for a new Application for Correction of Military Record and is hoping for assistance in getting this discharge corrected and to be approved for benefits that she is entitled to.

4. The applicant enlisted in the Regular Army on 24 October 2000 for four years. Her military occupational specialty was 88M (Motor Transport Operator).

5. The applicant requested a name change due to marriage on 30 April 2001.

6. The applicant was reported absent without leave (AWOL) on 1 June 2001 and dropped from the rolls on 1 July 2001.

7. Court-martial charges were preferred against the applicant on 28 June 2001 for violations of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with AWOL on or about 11 June 2001 and had remained absent in desertion.

8. The applicant surrendered to military authorities on 23 July 2001 at Fort Bragg, NC and was returned to military control on the same date and then transferred to Personnel Confinement Facility Fort Knox, KY.

9. An updated Charge Sheet shows charges were preferred against the applicant on 30 July 2001 for being AWOL on or about 1 June 2001 until on or about 23 July 2001.

10. The applicant consulted with legal counsel on 30 July 2001 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; the procedures and rights that were available to her.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Active Duty Enlisted Administrative Separations), Chapter 10, for the good of the service. She further acknowledged she 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 and she may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. She elected not to submit statements in her own behalf.

11. The applicant's immediate commander recommended approval of her request for discharge in lieu of trial by court martial. The commander noted based on her previous record, punishment could be expected to have a minimal rehabilitative effect. There did not appear to be any reasonable ground to believe that the applicant is, or was, at the time of her misconduct, mentally defective, deranged, or abnormal and recommended the issuance of a discharge UOTHC.

12. The separation authority approved the applicant's request for discharge in lieu of court-martial on 8 February 2002 and directed the applicant's reduction to private/E-1 with the issuance of an UOTHC discharge.

13. The applicant was discharged on 21 February 2002. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, Separation Code KFS and Reentry Code 4. Her service was characterized as under other than honorable conditions. She completed 1 year, 2 months, and 6 days of net active service. She lost time from 1 June 2001 to 22 July 2001.

14. 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 AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. The applicant provides:

a. A copy of her college transcripts and photographs.

b. A privacy act release form (PARF) and an email from Congressman GH__ regarding the applicant's application. She sought congressional assistance.

16. On 19 October 2006, the Army Discharge Review Board determined she was properly and equitably discharged and denied her request for upgrade of her discharge.

17. On 4 August 2009, ABCMR responded to the applicants two applications before the ADRB dated 20 June 2008. The applicant had requested a second records review by the ADRB. She was only entitled one discharge records review from the ADRB, she could submit a DD Form 149 to the ABCMR for a records review.

18. On 14 May 2010, by letter, ABCMR informed the applicant she had exhausted her appeals with the ADRB.

19. On 21 April 2023, by letter, the U.S. Army Criminal Investigation Command (USACID) advised regarding a request for a sanitized copy of information from CID, that a search of the Army criminal file indexes utilizing the information provided revealed no Military Sexual Assault/Trauma records pertaining to the applicant. The records at their center are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

20. In reference to health benefits, decisions of the Veterans Administration are solely within the jurisdiction of that agency. While the Army Board for Correction of Military Record can correct errors in an individual's military records it has no authority to direct or influence decisions by other agencies.

21. 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.

22. MEDICAL REVIEW:

a. The applicant requests an upgrade of her UOTHC characterization of service to honorable. She contends her misconduct was related to PTSD and Sexual Assault/Harassment.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted into the Regular Army on 24 October 2000; 2) Court-martial charges were preferred against the applicant on 28 June 2001 for violations of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with AWOL on or about 11 June 2001 and had remained absent in desertion; 3) The applicant surrendered to military authorities on 23 July 2001 at Fort Bragg, NC and was returned to military control on the same date and then transferred to Personnel Confinement Facility Fort Knox, KY; 4) The applicant surrendered to military authorities on 23 July 2001 at Fort Bragg, NC and was returned to military control on the same date and then transferred to Personnel Confinement Facility Fort Knox, KY; 5) An updated Charge Sheet shows charges were preferred against the applicant on 30 July 2001 for being AWOL on or about 1 June 2001 until on or about 23 July 2001; 6) The applicant consulted with legal counsel on 30 July 2001 and after consulting with legal counsel, the applicant voluntarily requested discharge under the provision of AR635-200, Chapter 10 ; 7) The separation authority approved the applicant's request for discharge in lieu of court-martial on 8 February 2001 and directed the applicant's reduction to private/E-1 with the issuance of an UOTHC discharge; 8) The applicant was discharged on 21 February 2002 under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No military BH records were provided for review. A review of JLV was void of any BH treatment records for the applicant and she does not have a service-connected disability. No civilian BH records were provided for review.

d. The applicant is seeking upgrade of her UOTHC discharge and contends her misconduct was related to PTSD and Sexual Assault/Harassment. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and, except for her self-statement, she provided no documentation supporting her contentions. Additionally, an Army CID memorandum, dated 21 April 2023, showed that a review of the Army Criminal File Index revealed no records pertaining to the applicant. In absence of sufficient documentation supporting the applicant's contention, there is insufficient evidence to establish that her misconduct was related to PTSD and Sexual Assault/Harassment and insufficient evidence to warrant an upgrade of her UOTHC discharge characterization.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence in the records that the applicant had a condition or experience during her time in service that mitigated her misconduct. However, the applicant contends her misconduct was related to PTSD, and Sexual Assault/Harassment

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends her misconduct was related to PTSD, and Sexual Assault/Harassment.

(2) Did the condition exist, or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant is seeking upgrade of her UOTHC discharge and contends her misconduct was related to PTSD and Sexual Assault/Harassment. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and, except for her self-statement, she provided no documentation supporting her contentions. Additionally, an Army CID memorandum, dated 21 April 2023, showed that a review of the Army Criminal File Index revealed no records pertaining to the applicant. In absence of sufficient documentation supporting the applicant's contention, there is insufficient evidence to establish that her misconduct was related to PTSD and Sexual Assault/Harassment and insufficient evidence to warrant an upgrade of her UOTHC discharge characterization.

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct separation. The Board found no evidence of in-service mitigating factors to overcome the misconduct. Based on a preponderance of evidence available for review, 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 Board determined 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.

ADMINISTRATIVE NOTE(S): Not Applicable

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. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10, provided that a member who committed an offense or offenses under the UCMJ, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions

or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//