

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230001257

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions character of service to honorable
- a personal appearance hearing via video/telephone
- restoration of rank prior to separation from PVT/E-1 to SPC/E-4

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 638 (Recommendation for Award), 19 April 2001
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 16 January 2004
- Resume
- Clinical Psychological Assessment report, 1 June 2015
- Psychological evaluation, 10 pages, 19 November 2015, and 3 December 2015
- letter/report from a psychiatrist, 11 April 2016
- post service medical records, 4 pages, 5 May 2017
- character reference letter, undated
- two (2) character reference letters from the applicant's siblings, 18-31 May 2021
- two (2) Veteran Administration (VA) Forms 10-5345 (Request for and Authorization to Release Health Information), undated
- Memorandum, Department of Veterans Affairs, Subject: Physician note documenting nature of risk of Applicant, 12 May 2023

FACTS:

1. The applicant did not file within the 3-year period 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:

a. She would like a reasonable opportunity to correct her military records and receive VA benefits/compensation to ensure fundamental fairness for the injustices of military sexual trauma (MST) she experienced while in service. She reported the sexual harassment/assault and was a witness amongst other victims. A Captain (CPT) stalked her and she feared for her safety. She requested a compassionate reassignment but was ignored and unvalidated.

b. The Army was a safe place for her until she was harassed and assaulted. She was stalked daily with no command assistance or mental health services, which contributed to her decision to desert her post and remain absent without leave (AWOL) for health and safety reasons.

c. She was diagnosed with post-traumatic stress disorder (PTSD), anxiety disorder, and depression with frequent suicidal ideation. The injustice of sexual assault while in service has affected her personal, work life, and family life. She served her country with all the Army core values instilled in her regardless of hardships in her youth. Her service would have continued to be honorable except for the fact that she was not supported or protected by her command. Additionally, her application to the Board notes her request is related to post-traumatic stress disorder (PTSD) and MST.

3. The applicant initially enlisted into the United States Army Reserve for a period of 8 years on 29 May 1996. She enlisted in the Regular Army on 9 June 1997. She executed one immediate reenlistment on 15 February 2000.

4. She was promoted to the rank/grade of Specialist (SPC)/E-4 on 1 December 1999.

5. The applicant served in Kosovo from 2 December 2000 to 24 May 2001.

6. A DA Form 638 (Recommendation for Award), dated 19 April 2001, shows she was awarded the Army Achievement Medal for her meritorious service.

7. A DA Form 31 (Request and authority for leave), dated 23 July 2002, shows the applicant was approved for ordinary leave from 10 June 2002 through 16 June 2002. This form also shows she did not sign back into her unit and she went absent without leave (AWOL).

8. Her record contains a series of documents, to include DA Forms 4187 (Personnel Action), and a DA Form 3975-4 (Military Police Report-Additional Persons Related to Report), which show:

a. On 25 June 2002, the applicant's duty status changed from present for duty to AWOL.

b. On 26 July 2002, her duty status changed from AWOL to dropped from rolls.

c. On 22 September 2003, she surrendered herself to military authorities at Fort Shafter, HI.

9. Court-martial charges were preferred against the applicant on 24 November 2004 for absenting herself from her unit without leave from on or about 25 June 2002 to on or about 3 October 2003.

10. On 10 December 2003, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an Under Other Than Honorable Conditions Discharge if this request is approved, and of the procedures and rights available to her. Following this consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In her request, she acknowledged:

a. She understood that submitting this request for discharge she acknowledge that she understood and is guilty of the charges against her or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

b. She had been advised and understand the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge she will be deprived of many or all Army benefits that she may be ineligible for many, or all benefits administered by the Veterans Administration, and she may be deprived of rights and benefits as a veteran under both state and federal law. She further understands that she must apply to the Army Discharge Review Board or the ABCMR if she wishes review of her discharge.

c. She also understood that once her request for discharge is submitted, it may be withdrawn only with consent of the commander exercising court-martial authority, or without that commander's consent.

11. The chain of command's recommendations are void from her record. However, on 18 December 2003 the separation authority approved the applicant's elimination from the service under the provisions (UP) of AR 635-200, Chapter 10 and ordered the issuance of an under other than honorable conditions character of service and the applicant's reduction to private/E-1.

12. The applicant was discharged from active duty on 16 January 2004 UP of AR 635-200, chapter 10, in lieu of court-martial, with an under other than honorable conditions character of service. Her DD Form 214 shows she completed 6 years, 5 months, and 4 days of active service with lost time from 25 June 2002 to 3 October 2003. This form also shows she received a separation code of "KFS" and a reentry code of "4." Additionally, she was awarded or authorized:

- Army Good Conduct Medal
- Army Achievement Medal
- National Defense Service Medal
- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal
- Kosovo Campaign Medal

13. The applicant provides:

a. A clinical Psychologist Assessment Report dated 1 June 2015. The applicant underwent a psychological assessment. The Minnesota Multiphasic Personality Inventory–II (MMPI-II) was administered on 22 May 2015. The testing yielded consistent with depression symptoms related to postpartum depression and anxious distress features, PTSD due to past trauma, and social anxiety syndromes.

b. A 10-page Psychological Evaluation report show the applicant reported for testing on 19 November 2015 and 3 December 2015. Testing results and clinical interview showed significant symptoms of posttraumatic stress resulting from psychological trauma during her military service. Her psychiatrist (Dr. P_, 2015) noted that although she had a predisposition to trauma due to childhood distress, and the sexual harassment and sexual abuse experienced by a military officer increased postpartum depressive symptoms after the birth of her children.

c. An Adult psychologist report which notes the applicant being a patient since June 2015 and diagnosed with PTSD and seen regularly for psychotherapy and medication management.

d. Four-page post military mental health physician notes which applicant chief complaint of PTSD and anxiety from medic experience in Kosovo during deployment there around 2000 and PTSD from MST and childhood trauma. It also notes a history of suicide attempts, she was on medication management and receiving 45 minutes psychotherapy sessions.

e. Character reference letter from military friend that attest to the applicant being a longtime friend. He states they served together, and he can attest to her excellent character and strong work ethic. He always saw her work late and on weekends, she

was never reprimanded for negative or unprofessional behavior. She placed second out of six other unit arms rooms, during the Battalion Arms room inspection. She was also instrumental in providing weapon accountability to and from a rapid deployment to Kuwait in 1999. She is a single mother who also has performed selflessly as a registered nurse.

f. Character reference letters from the applicant's brother and sister attest to her excitement to serve in the military. They lost contact when she went to Germany and was later informed that she was AWOL. When she returned home, she needed support and healing, she was withdrawn from socialization, she had outburst from being angry for no reasons, not getting out of bed or wanting to eat. She verbalized wanting to hurt herself, and she finally admitted she had been sexually harassed by a superior who requested sexual activities in exchange for a promotion. She should have been treated with dignity and respect. She should be granted an upgrade to her character of service.

g. VA Forms 10-5345 requesting for an expedited review of discharge and a physician note documenting the applicant clinical needs.

h. The applicant provides her resume which show her military and civilian work history.

14. A member of the staff requested sanitized copies of Law Enforcement Reports from Department of the Army, Criminal Investigation Division based on the applicant's contention that she reported sexual harassment/assault and was a witness amongst other victims and that a CPT stalked her. A search of the Army criminal file indexes revealed no Sexual Assault/Harassment records pertaining to the applicant.

15. Regulatory guidance provides a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

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

MEDICAL REVIEW:

1. Background: The applicant is requesting an upgrade of her under other than honorable conditions (UOTHC) discharge to honorable and a restoration of her rank.

The applicant asserts military sexual trauma (MST) as a mitigating factor in her misconduct and discharge.

2. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

a. The applicant initially enlisted into the USAR on 29 May 1996. She enlisted in the Regular Army on 9 June 1997. She executed one immediate reenlistment on 15 February 2000.

b. The applicant served in Kosovo from 2 December 2000 to 24 May 2001. She was awarded the Army Achievement Medal for her meritorious service, 19 April 2001.

c. The applicant was approved for ordinary leave from 10 June 2002 through 16 June 2002, however she did not sign back into her unit, and she went absent without leave (AWOL). On 26 July 2002, her duty status changed from AWOL to dropped from rolls. On 22 September 2003, she surrendered herself to military authorities at Fort Shafter, HI.

d. Court-martial charges were preferred against the applicant on 24 November 2004 for absenting herself from her unit without leave from on or about 25 June 2002 to on or about 3 October 2003.

e. On 10 December 2003, the applicant voluntarily requested discharge under AR 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. Her request was approved.

f. The applicant was discharged on 16 January 2004 with an UOTHC characterization of service.

3. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, her ABCMR Record of Proceedings (ROP), DD Form 214, documents from her service record and separation, as well as several documents pertaining to psychological services (assessment, evaluation, letter), other post service medical records, character references, VA forms, and a VA memorandum. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV), though minimal data was available. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

a. The applicant asserts she was sexually assaulted and harassed, and was a witness to other victims, and after she reported it the captain (CPT) stalked her. She

reported requesting a compassionate reassignment but was ignored, and overall, she was not supported or protected by her unit. She also asserts her service was honorable prior to these events and that his ongoing harassment, and her lack of support and resources is what contributed to her decision to desert her post, for "health and safety reasons." The applicant has since been diagnosed with PTSD, anxiety, depression and frequent suicidal ideation.

b. The applicant's time in service predates consistent use of electronic health records (EHR) by the Army, hence minimal EHRs are available for review. Medications prescribed are available for review, and it appears she was prescribed sertraline in December of 2003, as well as clonazepam. This suggests someone was treating her for mental health concerns, likely anxiety and/or depression. Her service record and supporting documents did not contain her service treatment records (STR) and no other records were provided to substantiate her claim. However, the applicant did include character letters and the letters support her narrative of experiences, and highlight the changes observed in her behaviors, functioning and symptoms from her time in service to after. A request for information from CID did not produce any records or data about the applicants asserted MSTs or being stalked.

c. The applicant included civilian mental health records with her application. A psychological evaluation was completed spanning multiple sessions to include 19 November 2015 and 3 December 2015. Results from the interview and testing show significant symptoms of PTSD resulting from psychological trauma during her military service. Her treating psychiatrist had noted that while she did have childhood distress, that the sexual harassment and abuse experienced by the CPT increased her postpartum depressive symptoms after the birth of her children. She was diagnosed with PTSD, obsessive compulsive disorder with fair insight, and major depressive disorder, recurrent episodes, severe with anxious distress (MDD). Several letters from previous providers were included, seemingly as part of her psychological assessment. The letter from June shows a psychologist had diagnosed her with PTSD and MDD, as well as social anxiety disorder, and summarized her own testing results from May 2015. A letter from her treating psychiatrist further details her history of trauma and concurred with the previous psychological assessment findings.

d. Per the applicant's VA EHR, she is not service connected. However, given the characterization of her discharge, she would not typically be eligible for most VA benefits. The applicant has been engaged mental health care through the VA since 2017. She has been diagnosed with PTSD, MDD, bipolar disorder, OCD, panic disorder, other manic episode, suicidal ideation, and personal history of self-harm. She has engaged in individual therapy, group therapy, intensive outpatient care, case management, and medication management. Her record consistently identifies trauma related symptoms stemming from her MST, though her time in Kosovo and childhood stressors are also addressed. Through review of JLV, this applicant did have

“Community Health Summaries and Documents” available, with PTSD, OCD and bipolar disorder listed as active problems (from August and September of 2023).

4. It is the opinion of the Agency Behavioral Health Advisor that while there is minimal evidence from her time in service, there is sufficient supporting evidence from other sources (letters, medical records, psychological assessments and self-report) since her time in service that substantiate her claim. In addition, she has since been diagnosed with PTSD, and other mental health conditions, which appear directly related to her service and her experiences of MST.

Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating experience (MST). She has also since been diagnosed with a mitigating condition (PTSD).

b. Did the condition exist, or experience occur during military service? Yes, the MST occurred during her time in service. Mitigating mental health conditions also appear directly related to her service, with some evidence of mental health treatment while in the service.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant’s medical records since her time in service do support that she has been diagnosed with PTSD, depression, social anxiety, and OCD. In addition, if not for her characterization of service, it is more likely than not that her mental health conditions (to include PTSD) would be service connected. And while there are minimal medical records from her time in service, it is clear she was prescribed medication for mental health concerns while active. In addition, the applicant’s assertion in her application, and consistently across her post discharge medical records, suggest she likely experienced some acute stress and/or posttraumatic symptoms. While no documentation from her time in service was available to support her assertions, there is sufficient collateral information from letters and post discharge medical records to help substantiate her claim, and per Liberal Consideration guidance, her contention is sufficient to warrant the Board’s consideration. AWOL occurred after her reported MSTs and is the misconduct leading to her discharge. AWOL is an avoidance behavior associated with the natural history and sequelae of trauma-exposure, and there is a nexus between MST and AWOL, as a self-protective measure to escape the perpetrator. As stated by her psychiatrist, survival supersedes all else and the body can act in fight or flight response, without regulation from the rational brain. In summary, mitigation is strongly supported, and an upgrade to honorable is recommended with a narrative reason for separation change to Secretarial Authority.

BOARD DISCUSSION:

1. 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.

2. After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct, the reason for her separation and whether to apply clemency. The Board considered the letters of support and evidence of post-service achievements. The Board found sufficient evidence of in-service mitigating factors for the misconduct. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

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 sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD214 showing in:

- item 4a (Grade, Rate, or Rank): SPC
- item 4b (Pay Grade): E-4
- Item 24 (Characterization of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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.

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 635-8 (Separation Processing and Documents), currently in effect, prescribes that separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the separation document is a synopsis of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. Paragraph 5-6 stated for Block 4: Grade, Rate, or Rank, verify that active-duty grade or rank and pay grade are accurate at time of separation.

3. 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, the punishment for which under UCMJ and the Manual Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The request may be submitted after court-martial charges are preferred against the soldier or, where required, after referral, until final action by the court-martial convening authority. 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 Service 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.

4. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

5. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//