

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230001498

APPLICANT REQUESTS: in effect,

- amendment of item 28 (Narrative Reason for Separation) on her DD Form 214 (Certificate of Release or Discharge from Active Duty) from "misconduct"
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- self-authored letter
- statement of support, M.R.R. (father)
- impact statement (self)
- Army Review Boards Agency (ARBA) letter, 24 August 2021
- Veterans Affairs (VA) benefits letter, 14 November 2022
- VA decision letter, 9 November 2022

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 was diagnosed with post-traumatic stress disorder (PTSD) related military sexual trauma (MST) recently and granted a disability compensation rating. At the time of the events, she was advised to go to Walter Reed Army Medical Center (WRAMC) to walk into the mental health clinic because her therapist and counselor said they could not do anything else for her. Her unrecognized PTSD and anxiety were getting worse. She was accused of threatening to go absent without leave (AWOL) which was untrue and subsequently reported to her commander, put on restrictive duty and later penalized with an article [15] and demoted. She spent a week in an inpatient psychiatric facility and was subsequently pushed out of the military. She

went for help and instead was lied on and punished. She went to Walter Reed and then back to her duty station, that is not going AWOL.

a. In her personal statement the applicant describes events that occurred during her time in the military from basic training and advanced individual training where her drill sergeant sexually assaulted and harassed her. She went home on convalescent leave and was reclassified.

b. Her conditions continued after her training was complete. At her new duty station Fort Detrick, MD she was seeing a chaplain about her continuous anxiety and he recommended that she see the base therapist. After seeing the therapist for a few months, she was recommended to walk into Walter Reed.

c. She expressed that she did not want to be in the military. The intake person asked her if she wanted to go AWOL. She told him that is not what she said she drove there for help. He stopped the interview and told her he was going to call her commander and tell them she was threatening to go AWOL.

d. She returned to her duty station and her commander said he will fix her since she is going around Walter Reed telling others that she wants to go AWOL. She felt suicidal and ended up spending the next week or two at the inpatient Walter Reed Psychiatric unit while her commander was planning more punitive actions.

e. A JAG attorney at a different base told her that the treatment from her command was illegal. Her mother meanwhile was in constant correspondence with Senator [REDACTED] office before she received any punitive treatment because she knew something was wrong with her and it all started when she left for the military. She was ashamed, embarrassed being treated unfairly and signed some papers after she was hospitalized to get herself discharged. She was given a characterization of misconduct, but she does not see how reaching out for mental health help lead to punishment from her chain of command.

f. She also submitted a 2-page impact statement explaining her mental health, physical health, cognitive being, relationships and career.

3. The applicant enlisted in the Regular Army on 10 November 1998. She held military occupational specialty 91K (Medical Laboratory Specialist).

4. She had multiple counseling's from 15 November 1999 – 21 June 2000, within her file consisting of

- 15 November 1999, reception, and integration
- 14 December 1999, performance, attitude, and wellbeing

- 8 May 2000, failure to report and performance, wellbeing, and counseling changes
- 19 May 2000, remain within the limits of Fort Detrick until further notice
- 24 May 2000, poor performance
- 12 June 2000, returning to work after a two-week absence as an inpatient at WRAMC Behavioral Science Ward
- 14 June 2000, reported to duty in the wrong uniform
- 20 June 2000, misconduct
- 20 June 2000, duties related to her job; expectations as a member of 2nd squad
- 21 June 2000, failure to report to place of duty and to do her assigned laboratory duties
- 21 June 2000, refusal to accomplish assigned duties due to her want to be discharged from the Army

5. On 19 June 2000, she received non-judicial punishment for willfully disobeying a superior officer, in that she had received a lawful command from Captain D.W., her superior commissioned officer, then known by her to be her superior commissioned officer, to remain within the limits of Fort Detrick until further notice, or words to that effect did at or near Fort Detrick, MD, on or about 21 May 2000, willfully disobey the same. She was reduced to the grade of E3. She appealed the punishment and did not submit additional matters. The next higher commander considered the appeal, and it was in his opinion that the proceedings were conducted in accordance with (IAW) law and regulation, and the punishment imposed were not unjust nor disproportionate to the offense committed.

6. On 30 May 2000, a Report of Mental Status Evaluation was conducted due to separation IAW Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 5-13. The psychiatrist noted the applicant had adjustment disorder with mixed anxiety and depressed mood. This individual meets the retention standards prescribed in Chapter 3, AR 40-501 (Standards of Medical Fitness), and there is no psychiatric disease or defect which warrants disposition through medical channels. This individual was and is mentally responsible, able to distinguish right from wrong and to adhere to the right and has the mental capacity to understand and participate in administrative proceedings. This condition and the problems presented by this individual are not, in the opinion of this examiner, amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It is unlikely that efforts to rehabilitate or develop this individual into a satisfactory member of the military will be successful.

7. A separation examination was conducted on 8 June 2000, in which she was found qualified for retention.

8. On 13 July 2000, her commander-initiated action to separate her for a pattern of misconduct IAW AR 635-200, chapter 14, paragraph 14-12b. The reason for his proposed action is that on numerous occasions she failed to be at her appointed place of duty at the prescribed time, she disobeyed the company commander's order not to leave the limits of Fort Detrick because her pass privileges had been revoked, and she had refused and continued to refuse to perform her appointed laboratory and administrative duties. He recommended a general discharge. She acknowledged receipt of the initiation.

9. She was afforded the opportunity to consult with appointed counsel for consultation; or military counsel of her own choice, if he or she is reasonably available; or civilian counsel at her own expense, she declined the opportunity. She understood she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to her.

10. Her chain of command recommended that she be separated IAW AR 635-200, paragraph 14-12b prior to the expiration of her term of service on 13 July 2000.

11. Trial counsel reviewed the separation packet IAW AR 635-200 and found it to be administratively sufficient.

12. The separation authority directed that the applicant be separated from the Army prior to the expiration of her term of service under the provisions of AR 635-200, paragraph 14-12b, for a pattern of misconduct.

13. Accordingly, she was discharged with a general character of service on 21 July 2000, for misconduct IAW AR 635-200, paragraph 14-12b. Her DD Form 214 shows she completed 1 year, 8 months, and 12 days net active service this period.

14. On 15 June 2001, the Army Discharge Review Board (ADRB) determined that the characterization of service was inequitable because the applicant's misconduct may have been mitigated by her diagnosed adjustment disorder. Accordingly, the Board voted to grant relief in the form of an upgrade of characterization of service to fully honorable. The Board determined that the reason for discharge was proper and equitable and voted not to change it. A DD Form 214 was issued changing her character of service to honorable. Her narrative reason for separation remained as "misconduct" with a separation code of "JKA" and a reentry code of "3".

15. On 19 May 2014, the applicant reapplied to the ADRB requesting a change to her narrative reason for separation. On 8 December 2014, the ADRB determined that she was properly and equitably discharged. Accordingly, her request for a change in the character and/or reason of her discharge was denied.

16. The applicant provided:

a. Statement, M.R.R. (father) stating she told him about the sexual harassment and that her mother was in touch with Senator ██████ to help get her removed from that situation. He explained her personality and activity prior to entering the military. He also described her flashbacks since being discharged from the Army.

b. Army Review Boards Agency (ARBA) letter, 24 August 2021, regarding the applicant being able to reapply to the ADRB due to a settlement agreement.

c. Veterans Affairs (VA) benefits letter, 14 November 2022, showing:

- PTSD rated at 70% as of 21 November 2021
- Tension headaches rated at 50% as of 21 November 2021
- Left and right knee, shin splints rated at 10% each as of 21 November 2021
- Left and right ankle strain rated at 10% each as of 3 March 2022
- Combined rating of 90% as of 21 November 2021

d. VA decision letter, 9 November 2022, showing the ratings decision and reasons for decision.

17. AR 15-185 (ABCMR) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR on a case-by-case basis.

18. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct.

19. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

20. MEDICAL REVIEW:

a. The applicant is requesting a change to her narrative reason for separation to something other than “misconduct”. She contends her separation was related to PTSD/MST.

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 10 November 1998; 2) As outlined in the ROP, she received multiple counseling statements between 15 November 1999 – 21

June 2000; 3) On 19 June 2000, she received non-judicial punishment for willfully disobeying a superior officer, in that she had received a lawful command from Captain D.W., her superior commissioned officer, then known by her to be her superior commissioned officer, to remain within the limits of Fort Detrick until further notice, or words to that effect did at or near Fort Detrick, MD, on or about 21 May 2000, willfully disobey the same; 4) . On 13 July 2000, her commander-initiated action to separate her for a pattern of misconduct IAW AR 635-200, chapter 14, paragraph 14-12b; 5) The separation authority directed that the applicant be separated from the Army prior to the expiration of her term of service under the provisions of AR 635-200, paragraph 14-12b, for a pattern of misconduct; 6) Accordingly, she was discharged with a general character of service on 21 July 2000, for misconduct IAW AR 635-200, paragraph 14-12b.

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. Included in the applicant's casefile was a Report of Mental Status Evaluation, dated 30 May 2000, that was conducted in preparation for administrative separation IAW AR 635-200, Chapter 5-13. The provider noted the applicant had adjustment disorder with mixed anxiety and depressed mood, met retention standards of AR 40-501, Chapter 3-33, was cleared for administrative separation, and recommended for administrative separation. Also included in the casefile was a Report of Medical Examination, dated 8 June 2000, that showed the applicant qualified for retention. No other military BH-related records were provided for review.

d. A review of JLV showed the applicant 70 percent SC for PTSD/MST. C&P Examination dated 1 July 2022 showed the applicant reported that while in AIT she and another Soldier were massaged and kissed by a supervisor. The applicant reported that "[the supervisor] started doing that more and more with the door closed." He reportedly took her to his house once and "a sexual act" happened. In the weeks that followed, he asked [the applicant] when was it going to happen again, and she said "Never." The supervisor would reportedly become upset when she did not want to talk to him. She reportedly started going to the clinic because of pain and fatigue. She went on convalescent leave (a month due to medical issues) and when she returned to work, she was reassigned to another unit and then another company. The examiner noted the applicant endorsed sufficient symptoms to meet criteria for PTSD and determined it connected to service.

e. The applicant's initial BH-related interaction with the VA appears to have occurred on 20 December 2021 whereby the applicant spoke with a provider and informed her that the applicant was informed that although she was ineligible for VA care, she was eligible for BH care secondary to MST. The provider informed the applicant she would enter the consult. The applicant was seen on 23 December 2021 for intake and reported

complaints of night terror, anxiety, depression, and panic attack. She reported initially receiving a Dishonorable Discharge after she “brought attention to a commanding officer that sexually assaulted her”. She reported recently receiving a letter in the mail stating that her case and others were under review for change in status. Reading the letter reportedly resulted in the resurgence of flashbacks. She was diagnosed with PTSD. The applicant next BH treatment encounter occurred on 4 November 2022 whereby she presented with complaints of a history of PTSD/MST and symptom exacerbation over the past 4 weeks. It was noted that her last engagement with the VA was approximately one year prior, however, she had been receiving therapy in the community since 2015. Treatment frequency had reported increased to weekly recently as the process of submitting the disability evaluation triggered unpleasant memories, flashbacks, anxiety, and worsened pain-related sleep problems. The applicant noted she was also diagnosed with Fibromyalgia. She was diagnosed with Anxiety and Dysphoria related to PTSD, started on psychotropic medication, and scheduled for outpatient treatment.

f. Encounter note dated 28 February 2023 showed the applicant was referred to the Mental Health Specialty Clinic for Intensive Outpatient Care and was enrolled in the program on 13 March 2023 for treatment of Chronic PTSD secondary to MST and Depression. Records showed the applicant completed 13 sessions of Cognitive Processing Therapy (CPT) for PTSD. During her final session she endorsed a reduction in PTSD and depression symptoms related to MST, to include no longer experiencing guilt and shame. She also endorsed an increase in positive social connections with others, to include friends and family. Treatment of CPT was noted as being successfully completed and the provider noted posttreatment follow-up would be conducted. On 15 September 2023 the applicant was seen for a posttreatment follow-up visit and reported an increase in depression and PTSD symptoms due to current life stressors characterized by seeking fulltime employment, caring for her father, working parttime, and attending school parttime. She reported being medication compliant. The provider recommended group therapy to address current symptoms and the applicant agreed. She was referred for group therapy and instructed to continue outpatient follow-up with her medication manager. JLV was void of any subsequent BH encounters.

g. The applicant is requesting a change in her narrative reason of separation from “misconduct”. She contends her misconduct was related to PTSD secondary to MST. A review of the records showed the applicant 70 percent SC for PTSD secondary to MST that occurred during AIT. Given the association between PTSD/MST and avoidance, problems/distrust with authority, and decreased motivation, there is a nexus between the applicant’s misconduct and her diagnosis of PTSD/MST such that her misconduct is mitigated. Also, given the Board’s commitment to making persons whole subsequent MST, there is sufficient evidence to support a change of narrative reason to reflect SA.

h. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant did have an experience or condition during his time in service that mitigated her misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 70 percent SC for PTSD secondary to MST

(2) Did the condition exist or experience occur during military service? Yes. The experience reportedly occurred during AIT.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of the records showed the applicant 70 percent SC for PTSD secondary to MST that occurred during AIT. Given the association between PTSD/MST and avoidance, problems/distrust with authority, and decreased motivation, there is a nexus between the applicant's misconduct and her diagnosis of PTSD/MST such that her misconduct is mitigated. Also, given the Board's commitment to making persons whole subsequent MST, there is sufficient evidence to support a change of narrative reason to reflect SA.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, regulatory guidance and published DoD guidance for consideration of discharge upgrade requests based on military sexual trauma. The Board found sufficient evidence of in-service mitigating factors for the misconduct to weigh in favor of a clemency determination and warrant a recommendation for relief.

2. The applicant's request for a personal appearance 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 before the Board is not necessary to serve the interest of equity and justice in this case.

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 is 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 DD Form 214 for the period ending 21 July 2000 showing

- Characterization of Service: No change
- Separation Authority: Secretarial Authority
- Separation Code: No change
- Reentry (RE) Code: No change
- Narrative Reason for Separation: No change

 █

█ █

█
████████████████████

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. AR 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 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general, under honorable conditions or an honorable discharge may be granted.
4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b, pattern of misconduct.
5. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned a SPD Code of "JKA" will be assigned a RE Code of 3.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised 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.

7. 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 Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); 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.

8. 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.

9. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//