

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230003146

APPLICANT REQUESTS: the applicant, the spouse of a former service member (FSM), requests upgrade of the FSM's discharge characterization from "Under Honorable Conditions (General)" to "Honorable."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Marriage License
- Statements of Support (three)
- Letter from a behavioral healthcare provider
- Psychodiagnostic Evaluation

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, the FSM served 2 years and 9 months in the Army. However, her mental instability prevented her from completing the remaining 3 months of her obligation.

a. A psychological diagnostic evaluation shows her misconduct was the direct result of her "low average range" cognitive abilities and her inability to retain information due to her weak working memory. She was also diagnosed with severe Attention-Deficit/Hyperactivity disorder that hindered her ability to retain information, follow directions, and to properly execute tasks. During her time in the Army, she suffered from severe stress, anxiety, depression, mood swings, and Bipolar II disorder, Hypomanic, with mixed features.

b. The FSM suffered tremendously in the Army. She was demoted, assigned extra work loads, lost a lot of weight, was judged, and bullied. She sought support through a chaplain, but it was to no avail. She has suffered through undetected bi-polar disorder

and attention-deficit disorder her entire life. She struggled with learning since she was five years of age and knew she had mental problems when she was an adolescent. In 2017, she finally found medical and psychological relief with consistent medical care at a psychological service center.

c. Upgrading the FSM's service characterization will make her fully eligible for Veterans Affairs benefits that include healthcare, burial assistance, life insurance, home loans, education, and training services.

3. On 26 May 1999, the FSM enlisted in the Regular Army for a period of 4 years in the rank/grade of private first class (PFC)/E-3. Upon completion of initial entry training, she was assigned to a unit at Schofield Barracks, HI.

4. The FSM accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 4 August 2000.

a. Her specific violations included:

- failing to go at the time prescribed to her appointed place of duty
- without authority, departing her appointed place of duty
- being disrespectful in language towards a noncommissioned officer (NCO)
- failing to obey a lawful order issued by an NCO on three occasions

b. Her punishment included reduction from PFC to private 2/E-2; forfeiture of \$263.00 pay, extra duty for 14 days, and restriction for 14 days.

5. DA Forms 4856 (General Counseling Form) show the FSM was counseled on the following dates for the reasons shown:

- 22 November 2000 - shows she was doing very well at the time
- 5 April 2001 - failure to meet standards for re-inspection of military equipment; disrespectful towards and NCO; disobeyed a lawful order; displayed a poor attitude; failure to maintain serviceability and accountability of equipment; poor performance; potential UCMJ and/or administrative separation action
- 20 April 2001 – failure to adapt to military life and referral to visit with a chaplain following her request to be separated from the military
- 26 April 2001 – follow-up visit with the chaplain during which she rejected the chaplain's advice to become a dedicated Soldier and fulfill her commitment

6. On 30 April 2001, the chaplain counseled the FSM regarding the difficulty she was experiencing with life as a Soldier. He opined, in part, the FSM did not demonstrate performance or a desire to be a Soldier or remain on active duty and recommended she be separated from the Army under the provisions of Army Regulation 635-200

(Personnel Separations – Enlisted Personnel), Chapter 13, for chronic inadequate performance.

7. The applicant was formally counseled on:

- 26 June 2001 - for failure to follow a lawful order issued by an NCO
- 12 July 2001 - for failure to report to her appointed place of duty at the time prescribed and disregarding a lawful order issued by an NCO

8. The FSM's immediate commander notified the FSM of the intent to initiate actions to separate her from the Army under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. The basis for this action was the FSM's repeated misconduct. She was recommended for a general discharge, but the separation authority would render the final decision.

9. On 8 August 2001, the FSM acknowledged receipt of the notification, consulted with counsel, and was advised of the basis for the contemplated actions to separate her and of the rights available to her. She elected to submit a statement in her own behalf wherein she requested to be discharged under honorable conditions so she could receive "GI Bill" benefits. She also included documentation of her positive service, as follows:

- monthly and quarterly counseling which showed she was doing a good job at the time (September and November 2000)
- a certificate commemorating her receipt of an Army Achievement Medal for outstanding contributions during a Thanksgiving meal preparation
- photocopies of challenge coins she received

10. The FSM's immediate commander recommended approval of her administrative separation under the provisions of Army Regulation 635-200, Chapter 13, due to unsatisfactory performance.

11. The separation authority approved the recommended separation action with a general, under honorable conditions characterization of service.

12. Orders and the FSM's DD Form 214 (Certificate of Release or Discharge from Active Duty) show she was discharged on 19 September 2001, in the rank of PFC, under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. Her service was characterized as Under Honorable Conditions (General). She completed 2 years, 3 months, and 24 days of net active service. She did not complete her first full term of service.

13. The applicant provides the following documents in support of the FSM's petition:

a. A behavioral health professional rendered a letter on 14 October 2019, wherein she stated the FSM had been a patient at their clinic since 2017. Due to her diagnosis, and the necessity of emotional stability, the importance of daily medication compliance is of utmost concern.

b. A 17-page psychodiagnostic evaluation provides details concerning the reason for the FSM's referral, background history, types of tests administered, mental status/behavioral observations, results of testing, diagnostic impression, and treatment recommendations for her behavioral health conditions.

14. In reaching its determination, the Board can consider the FSM's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. Background: Former service member's (FMS) spouse (husband) is requesting an upgrade of the FSM's discharge characterization from "Under Honorable Conditions (General)" to "Honorable." The applicant asserts other mental health as related to the request for upgrade.

b. 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:

- Applicant enlisted in the Regular Army on 26 May 1999.
- Applicant accepted non-judicial punishment (NJP), on 4 August 2000, for failing to go at the time prescribed to her appointed place of duty; without authority, departing her appointed place of duty; being disrespectful in language towards a noncommissioned officer (NCO); and failing to obey a lawful order issued by an NCO on three occasions.
- DA Forms 4856 (General Counseling Form) shows the FSM was counseled on numerous occasions (see record) from November 2000 to April 2001. One counseling involved her doing well (NOV 2000) but after that the counseling statements focused on failure to meet standards; disrespect towards and NCO; disobeyed a lawful order; displayed a poor attitude; failure to maintain serviceability and accountability of equipment; poor performance; potential UCMJ and/or administrative separation action; failure to adapt to military life and referral to visit with a chaplain following her request to be separated from the military; follow-up visit with the chaplain during which she rejected the chaplain's advice to become a dedicated Soldier and fulfill her commitment
- On 30 April 2001, the chaplain recommended she be separated AR 635-200, chapter 13, for chronic inadequate performance.

- She was formally counseled again in June and July 2001 for failure to follow a lawful order issued by an NCO and failure to report to her appointed place of duty at the time prescribed and disregarding a lawful order issued by an NCO
- The FSM's immediate commander notified the FSM of the intent to initiate actions to separate her from the Army under AR 635-200, Chapter 13, for unsatisfactory performance. The basis for this action was the FSM's repeated misconduct. She was recommended for a general discharge. Separation was approved.
- Applicant was discharged 19 September 2001 with an Under Honorable Conditions (General) characterization of service.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), marriage license, statements of support (three), letter from a behavioral healthcare provider, psychodiagnostic evaluation, DD Form 214, as well as documents from her service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV), though no data was available. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts other mental health as related to the request for upgrade, with the FSM's husband applying for her, with the application indicating she is incapacitated and unable to apply herself. He asserts that her "mental instability" prevented her from completing her term of service. The applicant asserts, while quoting findings from the included diagnostic evaluation, that the FSM's misconduct was the direct result of her "low average range" cognitive abilities and her inability to retain information due to her "weak working memory." She was also diagnosed with severe Attention-Deficit/Hyperactivity disorder that hindered her ability to retain information, follow directions, and to properly execute tasks. It is also asserted that during her time in the Army, she suffered from severe stress, anxiety, depression, mood swings, and Bipolar II disorder, Hypomanic, with mixed features. It is also asserted that she was judged and bullied, and overall mistreated and was not successful in getting support from the chaplain. The applicant and FSM are requesting that the board "lift the chapter 13 discharge to honorable discharge so that she can get veteran benefits..."

e. The applicant's time in service predates consistent use of electronic health records (EHR) by the Army, hence no EHRs are available for review. Her service record and supporting documents did not contain any service treatment records (STR). Her records do show that she was sent to see the chaplain on at least two occasions, and that the chaplain recommended her for separation. The memo notifying her of

separation mentions a physical and mental status exam, however copies were not included of either.

f. Per the FSM's EHR since discharge, she is not service connected. She's had no engagement with the VA since her discharge. Through review of JLV, the FSM did not have "Community Health Summaries and Documents" available for review. The applicant did include medical documentation from civilian providers. The applicant included a letter from a behavioral health professional (PA), dated 14 October 2019, stating that the FSM was a patient since 2017 and that due to her diagnosis and emotional stability it was important that she remain medication compliant. However, this letter does not include diagnoses, time frame of mental health experiences nor etiology.

g. The applicant also included a thorough psychodiagnostics evaluation, completed across numerous dates in 2016 and 2017. Please see the report in the supporting documents for all the provided findings. This advisor will focus on diagnoses, and other potentially mitigating factors, and when they may have developed. During this evaluation, she self-reported having been diagnosed with rapid cycling bipolar disorder (no specific date was given to when she was diagnosed nor when symptoms started though it appears she was still in Hawaii, but it was post her time in service). She also reported ADHD with her starting medications in 2001, and medication starting for her anxiety two years prior to the eval (hence around 2015). Her self-reported history does include difficulties with school as a child. Her cognitive testing results indicate she falls in the low average range of functioning, with her working memory being her weakest measure (borderline range of intellectual functioning). She lacks the capacity to do well with auditory attention, immediate memory and regurgitating information and would likely have a lot of trouble solving problems. She also experiences issues with concentration, ability to sustain focus and motivation toward completing tasks, secondary to ADHD as well as anxiety. The culmination of this 2016/17 evaluation led to her being diagnosed with avoidant personality disorder; bipolar II disorder, hypomanic, with mixed features, mild; and ADHD, predominantly inattentive type, severe.

h. It is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a mitigating condition at her time of misconduct. However, there is sufficient and ample evidence that she has since been diagnosed with a mitigating mental health condition, though it has not been service connected.

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 other mental health mitigates her discharge.

(2) Did the condition exist, or experience occur during military service? Yes, the applicant asserts the FSM had other mental health during her time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge. Yes. The applicant asserts mitigation for the FSM due to other mental health. There are no medical records from her time in service, nor before, to indicate that she was ever diagnosed with a mitigating mental health condition while in the service, nor that a preexisting condition was present and had been exacerbated. However, per a thorough evaluation in 2016 and 2017, it appears that she was diagnosed and began treatment for numerous disorders shortly after her discharge from the Army, with several of them likely developing in childhood (ADHD, cognitive deficits). Of note, a standalone personality disorder is not typically a mitigating factor. However, she was diagnosed with numerous conditions that would be considered. These disorders included bipolar disorder and anxiety, with ADHD providing some context though not necessarily mitigation as many of her struggles in the Army can be better understood or explained in the context of the anxiety, ADHD and impaired memory concerns (such as failure to meet standards, difficulty with accountability, difficulty following through on orders, poor performance, etc.). Failure to report is often an avoidance symptom, consistent with the natural history and sequelae of numerous conditions to include anxiety and/or a mood disorder. Bipolar disorder could also mitigate the irritability, as well as difficulty with impulse control. There is no current indication of psychosis, hence by all accounts she still knew the difference between right and wrong and could act in accordance with the right. Hence, being disrespectful in language and failing to obey lawful orders numerous times would not necessarily be mitigated. That said, her cognitive testing suggests that she significantly struggles with hearing information and remembering it/being able to use it for future action. It appears at least as likely as not, that her cognitive deficits in memory could have also impacted his area of her misconduct as well. Hence, per Liberal Consideration guidance, and the FSM's significant mental health diagnoses and findings regarding her cognitive functioning, this medical advisor recommends mitigating.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records and DoD published guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct and the reason for separation. The Board agreed that given the applicant's period of service, medical evidence is limited. However, based on that which is available for review, the Board concluded that it was more than likely than not that the totality of the applicant's mental health diagnosis were mitigating factors for her misconduct and relief is warranted.

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 her DD214 for the period ending 19 September 2001 to show the character of service as honorable.

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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, USC, 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, USC, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

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. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

5. 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.

6. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

//NOTHING FOLLOWS//