

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230003448

APPLICANT REQUESTS: in effect,

a. An upgrade of her characterization of service and correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- item 24 (Character of Service) – honorable
- item 28 (Narrative Reason for Separation) – a less derogatory narrative reason, such as “Secretarial Authority”

b. To use her Servicemembers’ Group Life Insurance (SGLI) coverage in the amount of \$10,000.

c. To be issued a military identification card to allow her to receive military/veteran benefits.

d. Any benefits, services, and compensation for her conditions related to military sexual trauma (MST).

e. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- List of Accomplishments
- Statistics from L_D_C_ Library, highlighting sexual assault and victims’ reactions to sexual assault, 1997
- Letter from a Member of Congress, 30 September 1998
- Letter from a U.S. Senator, 9 October 1998
- Statement from Specialist (SPC) J_W_, 2 December 1998
- Letters of Reference/Character (15)
- Memorandum, subject: Mental Status Evaluation for [Applicant], 7 January 1999
- Letter from Applicant’s Mother, 3 February 1999

- Memorandum, subject: Statement Regarding Request for Discharge in Lieu of Trial by Courts-Martial, 5 February 1999
- Memorandum, subject: Addendum to Memorandum dated 7 January 1999, 8 February 1999
- Record of Patient Appointments
- Letter, The Rape Crisis Center, 8 February 1999
- Letter from Attorney, 10 February 1999
- DD Form 214, 16 April 1999
- NGB Form 22 (Report of Separation and Record of Service), 16 April 1999
- Five Certificates of Live Birth
- Decree of Adoption, 6 June 2014
- Clark College, Associate in Arts, 18 June 2015
- Character References (20)
- Family Picture

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, in effect:

a. She was violently raped by three males in the Army, and it was covered up by the chain of command. She was wrongly charged with "promiscuity," while her attackers were set free. As a response to her pain, she turned to drugs. She knows it was the wrong response, but she did not see a way out of the wrongs that were being done to her. She believes she was wrongly discharged under the label of "under other than honorable conditions." She was sexually assaulted and in no way should she be punished further for what others did to her. She would like her honor to be restored to her by allowing her characterization of service to be upgraded to "honorable."

b. She is aware that today's military response toward victims of sexual assault is vastly different than what she experienced 24 years ago. If her situation had happened today, she knows it would not have had the same outcome as it did over 2 decades ago. Her experience of being sexually assaulted while in the military took her to some very bad places, which caused her to receive a less than honorable discharge. She went from being a model Soldier to less than honorable because of the circumstances that happened to her.

c. When she was discharged from the military in 1999, she was left shell shocked, worn down and emotionally numb from the trauma she experienced from being violently

raped, fighting in court, and not being believed by her male superiors, that she could not fight anymore. There was witness evidence, rape kit evidence, evidence from her military psychologist, along with her being diagnosed with post-traumatic stress disorder (PTSD). She has suffered ongoing mental/emotional trauma from the rape.

d. She was essentially beaten down from interrogations to the point of not wanting to take the three males that raped her to court because the Criminal Investigation Division (CID) posed something close to these questions: "Do you really want to ruin the lives of these three young men? Do you want to stand there in front of their mothers and tell them that their sons can no longer have a career, get married, have children, because you ruined their lives by sending them to prison?" She remembers telling them that she never wanted to ruin anyone's life, and she could not do that to their mothers. CID forced her to sign additional paperwork and told her that they would not release her from the interrogation room until she signed the paperwork. After hours of interrogation, and being emotionally beaten down, she just wanted to get out of there. She signed the papers, not fully knowing or realizing what she was signing. She learned later that they had forced her to sign a recantation of the charges she had brought against the three males who raped her.

e. The drill sergeants and leaders that were in command that believed her and supported her claim of being raped, were reassigned, and told that if they supported her, they would be dishonorably discharged. She fought for justice. She wrote to a General in the Air Force that was a friend of her dad, asking him if he could ask the powers that be to investigate. Her sister, a journalist, flew in and talked to a news station to get her story out there, in hopes for justice.

f. The official standpoint of her commanding officers was that it was her word against the three males. The charge of quarters (CQ) sergeants were told not to give her any messages from her lawyer or family. Three months after her rape, after exhausting every source to help bring her justice, and being stripped of all support, she felt completely alone. She had gone from being awarded Soldier of the month in August to having nothing and no one in November. She struggled to want to live anymore. She turned to alcohol and drugs to help her cope, which ultimately led to her discharge on 16 April 1999.

g. She has always held the military in high regard. Her dad was murdered in 1992, but before his murder he was a commander. Her younger brothers joined the Air Force. Her other brother died during service in 2004. She highly believes in the core values of the Army; she just does not believe in the way her case was handled or her sexual assault or the aftermath repercussions for her. She wants to clear her name, to have her discharge upgraded so that she can hold her head up high again, and no longer live under a banner of shame. She needs this so her trauma can be healed. She needs this for her kids, so they can talk about her military record proudly. She also needs this for

Veterans Affairs (VA) medical benefits, so she can be treated for ongoing PTSD from her rape and the depression that has gone along with it for over 24 years. She needs closure.

h. She waited this long to request that her discharge be upgraded because she was not aware until recently that she could. Also, she recently researched and discovered that additional support and discharge upgrades the military is now giving to veterans who have experienced MST.

3. The applicant provides the following:

a. A list of her personal accomplishments from 1999 to 2022. The applicant states, she pushed through to make these accomplishments while struggling with PTSD and depression.

b. Statistics from 1997, which highlighted sexual assault and victims' reactions to sexual assault. It shows that according to the American Medical Association, "sexual assault continues to represent the most rapidly growing violent crime in America, claiming a victim every 45 seconds," and can be considered a silent-violent epidemic. "Approximately 20 percent of sexual assaults against women are perpetrated by assailants unknown to the victim. The remainder are committed by friends, acquaintances, intimates, and family members. The article states that many factors contribute to underreporting sexual assault, which includes, embarrassment, fear of further injury, and fear of court procedures. The use of drugs and alcohol also contributes to the risk of sexual assault.

c. A letter from a member of Congress, dated 30 September 1998, which states the Congressman contacted the Department of the Army on her behalf and he would let her know as soon as he heard anything. He urged her to contact the local rape crisis center.

d. A letter from a U.S. Senator, dated 9 October 1998, which states the Senator contacted officials at the Pentagon and asked them to carefully review the situation and report to him with their findings and recommendation.

e. A statement from SPC J_W_, dated 2 December 1998, which states that on 2 September 1998 she relieved Soldiers escorting the applicant to CID.

f. Fifteen letters of reference and character from her instructors, school principal and teachers, family, friends, and youth pastor, which all state she was honest, courteous, and trustworthy. She always maintained a positive attitude, and her records had no evidence of misconduct or disciplinary action.

g. A letter from the applicant's mother, dated 3 February 1999, to the Commander, U.S. Army Garrison, Fort Sam Houston, TX, wherein she states she was writing to explain some facts that might have been pertinent to the applicant's situation, and this was her plea for justice and mercy.

h. A record of patient appointments, which shows the applicant had an appointment scheduled with mental health on 18 February 1999 and a psychiatry appointment on 22 February 1999.

i. Certificates of Live Birth for her children.

j. A decree of adoption, dated 6 June 2014.

k. A certificate from Clark College, which shows the applicant received her Associate in Arts.

l. She provided 20-character references, dated in 2022, from friends, family, and church members.

m. A picture of the applicant's family.

4. A review of the applicant's service record shows:

a. She enlisted in the Army National Guard (ARNG) on 6 April 1998, for a period of 8 years, in pay grade E-1/PVT.

b. Orders Number 66-7, dated 6 April 1998, issued by the Military Entrance Processing Station, shows the applicant was ordered to initial active duty for training (IADT) at Fort Jackson, SC with a reporting date of 14 May 1998 and advanced individual training (AIT) at Fort Sam Houston, TX, for military occupational specialty (MOS) 91K (Medical Laboratory Specialist), with a reporting date of 24 July 1998.

c. Orders Number 92-2, dated 12 May 1998, show her orders were amended. Her IADT location changed from Fort Jackson, SC to Fort Leonard Wood, MO.

d. DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), shows she was flagged on 3 September 1998 for adverse action.

e. A memorandum, dated 12 November 1998, shows the applicant was recommended to be recycled in the 91K course due to academic deficiency. The applicant had a failing average and missed numerous periods due to legal and personal problems throughout the course.

f. A memorandum, dated 4 December 1998, which shows she was recommended for relief from the 91K course due to a nonacademic deficiency.

g. DA Form 268 shows the applicant was flagged on 17 December 1998 for adverse action.

h. A memorandum, dated 7 January 1999, from a licensed clinical psychologist, which shows the applicant underwent a command referred mental status evaluation. The clinical psychologist states:

(1) During the evaluation, the applicant reported that she was raped by three male students in AIT, in August 1998. She gave a sworn statement to CID and then later recanted part of the statement. The applicant reported that she did not wish to sign the second statement but did so after several hours of coercion by CID. She reported feeling confused, frustrated, and ashamed, and she was told that things would get better for her if she signed the statements.

(2) To determine the applicant's emotional and personality functioning, she was given a comprehensive evaluation involving both qualitative and quantitative procedures, which consisted of several clinical interviews, history, medical records, review of witness statements, review of written character references, and observations during the session. A consultation was completed with the command and an interview was completed with the applicant's mother.

(3) Diagnosis:

- AXIS I: 309.81, PTSD, Acute
- AXIS II: V71.09, no diagnosis on AXIS II
- AXIS III: History of fractured fibula

(4) Findings:

(a) The applicant's condition could warrant disposition through medical channels. However, the condition could respond to treatment, particularly if moved from her immediate situation. The fact that she had been consistently exposed to situations reminiscent of the traumatic event made it more difficult for recovery to take place. Based on the evaluation, the diagnostic impression was (309.81) PTSD, within the meaning of Army Regulation 40-501 (Standards of Medical Fitness) and DSM-IV. This condition was represented by the acute (onset within 3 months of exposure to stressor) development of characteristic systems following exposure to an extreme traumatic stressor. In the applicant's case, this experience involved a serious threat to her physical integrity. In addition, the subsequent stressors associated with her involvement in the legal system likely exacerbated her symptoms. Although she recanted her original

allegation, she clearly experienced the sexual contact as a threat and as being without her consent.

(b) The symptoms presented by the applicant were consistent with those presented by many sexual assault victims, such as psychologically re-experiencing the event, attempts to avoid situations and things which remind her of the event, and symptoms of increased arousal (hypervigilance, sleep disturbance, irritability, etc.). Many of her behaviors were also consistent with those presented by sexual assault victims. For example, a note on her emergency exam stated there was “a long delay in presentation and patient didn’t f/u with the rape crisis center as directed earlier yesterday.” Many sexual assault victims wait several days or weeks before reporting an assault, with many never reporting the incident at all, particularly if the alleged assailants are acquaintances. It is not unusual for victims to wait to seek counseling, as many want to avoid dealing with the emotions associated with the trauma. These victims tend to feel that going on with their lives and trying to regain some sense of normalcy will help them to speed their emotional healing.

(c) Given her probable emotional state at the time of her interrogation, and the fact that she likely was still attempting to resolve her own feelings of guilt and responsibility regarding her involvement in the situation, she could have been more susceptible to persuasion with regard to finally agreeing to sign the second statement. This observation is supported by the conflicting information reported by CID, which was later corroborated by persons who accompanied the applicant to her interview. Further, as with victims of spouse abuse, victims of sexual assault often experience feelings of guilt, shame, or remorse about their behavior with regard to the assault. They may begin to blame themselves or feel that they deserved to be punished. Victims of sexual assault and sexual abuse do sometimes retract allegations for various reasons. Further, the applicant reported she was under the influence of codeine at the time of her interviews with CID. She reported this information only after prompting from the psychologist, and there was no written indication that CID asked her if she was under the influence of narcotics at the time of the interrogation, which could certainly of affected her level of fatigue, possible confusion, and overall resistance. Finally, it was important to note that the applicant’s previous traumatic experience with her father’s murder would likely make her more vulnerable to the stressors associated with her situation. Having experienced a previous traumatic experience could contribute to her desire to have the situation “over with” so that she could regain her own sense of emotional control.

(d) The psychologist stated that the findings of the evaluation were not intended to suggest the applicant’s guilt or innocence regarding the allegations of making a false statement. The findings were an assessment of her clinical presentation, her psychological test results, and other supporting data.

(5) The psychologist recommended that her condition could warrant disposition through medical channels if she did not respond to treatment. However, it was unlikely that she would improve while she remained in that environment, and it was predicted that her symptoms would resolve upon her removal from this environment. Therefore, it was strongly recommended that that applicant be removed from her situation, through any administrative means deemed appropriate by command. She was cleared for administrative action.

i. DA Form 4187 (Personnel Action), dated 15 January 1999, shows she was denied for advancement to E-2.

j. Court-martial charges were preferred against the applicant on 25 January 1999. Her DD Form 458 (Charge Sheet) shows she was convicted of the following charges:

(1) Charge I, Article 81 (Conspiracy), specification one: In that the applicant did, at or near San Antonio, TX on or about 11 December 1998, conspire with SPC M_M_, PVT E_M_, and PVT J_S_ to commit offenses under the Uniform Code of Military Justice (UCMJ), to wit: wrongful possession of cocaine with the intent to distribute and wrongful distribution of cocaine, and in order to effect the object of the conspiracy the applicant, PVT E_M_, SPC M_M_, and PVT J_S_ did drive to a known drug dealer's residence to purchase cocaine; did each contribute \$20.00 to purchase the cocaine; the applicant and PVT J_S_ did enter the drug dealer's residence and purchase the cocaine; and the applicant and PVT J_S_ did distribute the cocaine to PVT E_M_, SPC M_M_, SPC C_M_, PVT M_K_, and PVT K_N_ at Motel 6 at or near San Antonio, TX.

(2) Charge I, specification two: In that the applicant, ARNG, on active duty, did, at or near San Antonio, TX, on or about 11 December 1998, conspire with PVT E_M_, PVT J_S_, SPC M_M_, PVT K_N_, PVT M_K_, and SPC C_M_ to commit an offense under the UCMJ, to wit: wrongful use of cocaine, and in order to effect the object of the conspiracy the said PVT J_S_ did cut the cocaine into lines and provided a red straw for PVT E_M_, PVT H_M_ [applicant], PVT J_S_, SPC M_M_, PVT K_N_, SPC C_M_, and PVT K_ to snort the cocaine.

(3) Charge II, Article 112a (Wrongful Use, Possession, etc., of Controlled Substances), specification one: In that the applicant, ARNG, on active duty, did, at or near San Antonio, TX, on or about 11 December 1998, wrongfully possess an unknown amount of cocaine, a controlled substance, with the intent to distribute the said controlled substance.

(4) Charge II, specification two: In that the applicant, ARNG, on active duty, did, at or near San Antonio, TX, on or about 11 December 1998, wrongfully distribute an unknown amount of cocaine, a controlled substance.

(5) Charge II, specification three: In that the applicant, ARNG, on active duty, did, at or near San Antonio, TX, on or about 11 December 1998, wrongfully use cocaine, a controlled substance.

k. On 5 February 1999, after consulting with legal counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial under AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant acknowledged that she made the request of her own free will and was not coerced by any person. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to at least one of the charges against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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 Veteran's Administration, she could be deprived of her rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

l. The applicant elected to submit a statement in her own behalf. On 5 February 1999, the applicant stated:

(1) She came into the military to serve her country and to honor the memory of her late father. She excelled in basic training and at the end of basic training, she was selected from approximately 300 Soldiers to give the graduation speech for their company. At Fort Sam Houston, TX, she entered training to become a Medical Laboratory Specialist. She studied hard and did well in class. She was nominated by the class sergeant to attend the Soldier of the week competition in August 1998, and she was chosen by the drill sergeant to lead a class on racism, sexism, and cultural diversity.

(2) Everything about the Army changed for her at the end of August 1998. She went to the motel on 28 August 1998, and rented a room with three of her AIT classmates. Later that evening, she went to another room at the same motel, which was rented by PVT J_T_ and PFC E_C_. They were making screwdrivers with vodka and orange juice and persuaded her to join them in playing a drinking game. She became extremely intoxicated and was physically unable to resist when she was sexually assaulted by four males. She was raped by PVT T_, PFC C_, and another male Soldier, PVT F_. She had known PVT T_, PFC C_, and PVT D_ during basic training and PVT F_ during AIT, and she did not believe they would force her to have sex with them. They held her down and despite her protests, they had sexual intercourse and oral sex with her. Eventually, she passed out because she was so intoxicated. When she woke up, PVT T_ was on top of her having sex with her again. She forced him to get off her, got dressed and left the room.

(3) Afterwards she felt unclean and ashamed. She told two or three people what happened but did not report the incident. At first, she blamed herself and just wanted to forget the whole thing. She felt really disturbed and confused. At about 8:00 p.m. on 30 August 1998, she told drill sergeant C_ that she needed to talk to someone about something and that it was urgent. She was taken to Brooke Army Medical Center to the Urgent Care Clinic. She was questioned by medical personnel and a San Antonio Police Officer, and she told them what happened. She was given a rape examination and tested for sexually transmitted diseases. On 31 August 1998, she was questioned by CID, Special Agent (SA) C_A_ and she gave a sworn statement, in which she described the incident to the best of her recollection.

(4) A couple of days later, when the males were questioned, PFC C_ and PVT F_ wrongfully told CID that she had consented to have sex with them. PVT T_ did not initially make a statement because he was married and two other females had also made statements against him, regarding other incidents.

(5) On 2 September 1998, she was taken back to CID and questioned by SA A_V_. His manner was very accusatory; it was clear that he believed she had not been assaulted. The SA read the applicant her rights for false swearing and making a false official statement. Then he interrogated her for several hours comparing her statement to the statements made by the males and some of their friends. She believed that the SA wanted her to admit the incident was consensual. She became very upset and agreed to give a second statement. For two more hours SA V_ "helped" her write a new statement. In the statement typed by SA V_, she recanted the assault and rape allegations and said she had not resisted when PVT T_, PFC C_, and PVT F_ had sex with her, and that they did not hold her down and that they did not make the bruises on her arms. Even though PFC C_ had admitted that PVT T_ stood behind her and held her arms down.

(6) Following the second statement, her unit kept her under restriction to the barracks, chapel, the hacienda, the mini mall, the gym, and the mess hall for months. Her command believed she had lied about the assault and on 23 October 1998, her battalion commander gave her a written reprimand for underage drinking and group sex. In the letter of reprimand, the battalion commander stated, "Your involvement in underage drinking, a violation of Texas state law, and sexual promiscuity on 28 August 98 are in direct contradiction of Army values and indicative of a limited potential for future service in the military." He also said, "Your actions reflect almost total disregard for the laws of the State of Texas, the Army Values, and the good order and discipline of the command. You flagrantly violated my policy letter concerning alcohol and brought ruinous shame upon the ranks of the Army by your blatant disregard for the values or duty, respect, honor, and integrity." After reading his letter of reprimand, she felt horrible. Then her command initiated a chapter 14 administrative discharge against her

for misconduct because of the incident in the motel room and the conflicting statements she gave about the assault.

(7) Following the assault, she was unable to concentrate and after failing a test she was removed from her MOS training so she could take care of her legal and emotional problems. Because of the chapter 14, she finally got to see an Army mental health professional and she was diagnosed with PTSD, related to the assault.

(8) She stated that she believed it would be best for both her and the Army if she separated as soon as possible. She would return home and live with her mother in Oregon, and she planned to enroll herself in counseling with the Rape Crisis Center and a therapy group. She apologized for the mistakes that she made.

m. A memorandum, dated 8 February 1999, which states the memorandum was an addendum to the previous evaluation completed on 7 January 1999, by the licensed clinical psychologist. The psychologist stated that the applicant had continued treatment for PTSD. The psychologist reviewed the recent charges alleged against the applicant, and she was aware that the applicant was requesting separation in accordance with AR 635-200, Chapter 10. It was the opinion of the clinical psychologist that an administrative separation from active duty would be in the best interests of the applicant and the U.S. Army.

n. A letter from the Rape Crisis Center to the applicant's attorney, dated 8 February 1999, wherein the director states, she reviewed the case documents pertaining to the applicant and was quite troubled by the information that was sent and wanted to make an academic response to the extent possible. The director also stated that they met with the applicant on three occasions. She used information gleaned from interviewing the applicant, reading the materials that were sent, as well as her experience and specific resources, to form the basis for the opinions expressed below:

(1) Literature reflects a view of disclosure of sexual violence as a process in which both delayed reporting and recanting are rather common. "In general, sexual assault, especially when the offenders are known to the victim, is grossly underreported at the rate of only about one in ten (for women). Delayed reporting of rape is extremely common. Additionally, victims are often under some pressure from others not to report at all."

(2) "Regardless of whether or not she intended to recant, it would be a mistake to assume that recanting an allegation is indicative the original allegation is a lie. Only about 4% of rape allegations are false, according to FBI statistics."

(3) “Based on what we know about factors that interfere with timely disclosure of sexual assault, it is consistent that Ms. M_ [applicant] would in fact both delay initially reporting and then recant.”

(4) “In this case, even excluding her statement to me that she felt compelled to sign the second statement, factors including the number of perpetrators, the consumption of alcohol by all parties to the extent of extreme intoxication, and the command milieu in which Ms. M_ [applicant] found herself would be expected to influence her decisions regarding whether and when to report or retract her allegations of assault.”

(5) “As she may have rightly feared, [Applicant] was revictimized by the investigation itself and also certainly by the “administrative” letter of reprimand and the commander’s pursuit of discharge for misconduct.”

o. A letter from the applicant’s attorney, dated 10 February 1999, requesting that the SJA forward the correspondence with the applicant’s request for discharge for the good of the service.

p. A letter from the applicant’s attorney to the SJA, dated 31 March 1999, requesting that he submit the applicant’s request for administrative discharge in lieu of Trial by Courts-Martial for reconsideration by the General Court-Martial Convening Authority.

q. On 7 April 1999, the immediate commander recommended disapproval of the request for discharge in lieu of trial by court-martial. He stated that if the discharge was approved, he recommended that she be discharged under other than honorable conditions. The intermediate commanders agreed with the immediate commander's recommendation.

r. A memorandum for record, dated 15 April 1999, from the Chief, Criminal Law Division, Fort Sam Houston, TX, which states pursuant to the applicant’s attorney’s offer to cooperate, the applicant was allowed to meet with civilian law enforcement officials to provide information concerning her involvement with known narcotics distributors. The Chief, Criminal Law Division, stated that Detective Carlson of the San Antonio Narcotics Division was of the opinion that PVT S_ was the key player in obtaining the drugs for the seven Soldiers. Based on the evidence he had gathered; it became clear that PVT S_ was the Soldier who associated with the drug dealer and introduced the applicant.

s. The separation authority approved the discharge on 15 April 1999, and directed she be issued an under other than honorable conditions discharge.

t. The applicant was discharged on 16 April 1999. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, Chapter 10, in the rank/grade of private/E-1, and her service was characterized as under other than honorable conditions. She completed 11 months and 4 days of active service. Her DD Form 214 also show in:

- Item 18 (Remarks): Member has completed first full term of service.
- Item 23 (Type of Separation): Release from ADT and discharge from the reserve of the Army and return to ARNG.
- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 4

u. NGB Form 22 shows she was discharged from the reserve of the Army by the active Army on 16 April 1999. Item 24 (Character of Service) shows uncharacterized.

5. On 10 May 2023, CID provided sanitized Reports of Investigation (ROIs) pertaining to the applicant. The investigations established:

a. ROI 1: The offense of rape as it pertained to the applicant did not occur. PVT_, PFC_, PVT_, and the applicant engaged in consensual sexual intercourse, following which the applicant falsely reported the males raped her. Further investigation established the offense of Indecent Assault as it pertains to PVT_ and the applicant did not occur. Consequently, the applicant committed the offense of False Swearing and False Official Statement and PFC_ and PVT_ committed no offense. PVT_ and the applicant committed the offense of Sodomy when consensual cunnilingus on the applicant. Further investigation established the offense of rape did not occur as it pertains to PVT_. PVT_ and PVT_ engaged in consensual sexual intercourse, following which the applicant falsely reported she was raped. The applicant committed the offense of False Swearing and False Official Statement. Further investigation revealed the applicant committed the offense of Sodomy when she performed fellatio. Further investigation did not establish sufficient evidence to prove or disprove the allegation of assault.

b. ROI 2: Investigation established probable cause to believe the applicant, two other Soldiers, and two civilians committed the offense of Wrongful Use and Possession of a Controlled Substance (cocaine) when they used cocaine while at an off-post location between 28-29 November 1998. Further investigation established probable cause to believe they committed the offense of Conspiracy to Distribute a Controlled Substance (cocaine) when they purchased cocaine at an off-post residence on 11 December 1998. Further investigation established probable cause to believe the applicant and others committed the offense of Distribution of a Controlled Substance (cocaine) when they produced the cocaine at a party and allowed several people attending the party to consume the cocaine.

c. The complete report is available for the Board to review.

6. The applicant provided a response to CID's reports. She stated:

a. Since having to revisit her case more recently, she started having vivid flashbacks of being raped, due to having to read through all of the old case documents in order to support her claims of PTSD and the claims of being raped by three males while in the Army, subsequently giving in to intoxication and drugs because of her traumatic experience and depressed state. Through the past couple of decades, her trauma has definitely handicapped her, but she was able to compartmentalize it to a degree (and to the detriment of her health) to push forward in helping her children be a success.

b. She is currently not sleeping well, her appetite has significantly changed, her health is declining with the stress of facing what was done to her, both by the males that raped her and the CID agent that "helped" her rewrite the second recanted statement for her and coerced her to sign it. She feels violated and it is like everything is happening to her all over again. Her attention span is all over the place and she is having trouble concentrating, focusing, and moving forward in necessary day to day tasks.

c. She asks that the Board upgrade her discharge so she can qualify for medical benefits, psychological care, and counseling treatment, along with regaining her honor. Since she was raped, she has struggled with constant flashbacks, especially within her marital relationship with her husband. She tried so hard to push those memories down, and it is a constant struggle, and she is worn out. She is ready to receive the full scope of counseling that she needs for healing.

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her discharge to honorable. She contends she experienced military sexual trauma (MST) and resultant PTSD that mitigates her misconduct and discharge. 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 in Army National Guard (ARNG) on 6 April 1998. She was ordered to initial active duty for training (IADT) with a reporting date of 12 May 1998 and advanced individual training (AIT) with a reporting date of 24 July 1998; 2) Court-martial charges were preferred against the applicant on 25 January 1999 for: possession, use, and distribution of cocaine; 4) The

applicant was discharged on 16 April 1999, chapter 10, in the rank/grade of private/E-1, and her service was characterized as under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and military medical documentation provided by the applicant were also examined.

c. The applicant asserts she was exposed to MST and experienced PTSD while on active service, which mitigates her misconduct. There was evidence the applicant reported being sexually assaulted and had sought medical assistance for the assault in August 1998. While the results of the CID investigation did not support her assertion of MST, the applicant's academic performance began to deteriorate following her report of the assault. She was seen for a Mental Status Exam as part of her Chapter 14 separation proceedings on 07 January 1999. She was provided a through comprehensive psychological evaluation completed by a military clinical psychologist. The applicant was diagnosed with PTSD as the result of her experience of MST. Her psychiatric condition was determined to potentially warrant disposition through medical channels, but she was recommended for treatment and to be removed from her current situation. However, she was cleared for administrative action.

d. A review of JLV was void of medical documentation, and the applicant does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates her misconduct which led to her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her misconduct. There is sufficient evidence the applicant reported experiencing MST and resultant PTSD while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her misconduct. There is sufficient evidence the applicant reported experiencing MST and resultant PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was exposed to MST and resultant PTSD while on active service. The applicant did obtain and use cocaine. It is unclear the specific nature of the act of her distribution, but it did not appear the applicant was actively selling cocaine during her active service. Drug use is an avoidant

and self-medicating behavior, which is a natural sequelae to MST and resultant PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to her discharge is mitigable. It is also recommended her narrative reason for separation be amended.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and statements by her family and friends and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with conspiracy of wrongful possession of cocaine with the intent to distribute, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings, designated characterization of service, and narrative reason for separation assigned during separation. The Board noted the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that mitigated her misconduct which led to her discharge; however, disagreed finding that the severity of her misconduct was not mitigated. Based on a preponderance of the evidence, the Board concluded that the characterization of service and narrative reason for separation the applicant received upon separation was appropriate.
2. A portion of the applicant's request pertaining to use of her Servicemembers' Group Life Insurance, request for a military identification card, and benefits/services related to military sexual trauma are not within the purview of this Board. The Board recommended the applicant seek assistance through the Department of Veterans Affairs.
3. 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.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who had committed an offense or offenses, for which the authorized punishment included a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. Commanders will ensure that a Soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences. This paragraph also provides that the Soldier's written request will also include an acknowledgement that the Soldier understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a punitive discharge. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 than honorable characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions and when authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. 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.

8. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right

to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//