

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20230003660

APPLICANT REQUESTS: in effect, change her narrative reason for separation.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, her chain of command discharged her in retaliation after she reported an E-7 had sexually harassed her; that E-7 was subsequently court-martialed, and evidence revealed the battalion commander was aware of dozens of reports of sexual harassment against the E-7, but, because the E-7 was the commander's friend, the commander never took action.

3. A review of the applicant's service record reveals the following:

a. On 27 March 1987, the applicant enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 92A (Automated Logistical Specialist), orders assigned her to Panama; she arrived at her new unit, on 2 September 1987. On 29 September 1987, the applicant extended her enlistment by 6 months to meet service remaining requirements for an overseas tour with dependents.

b. On 6 October 1988, the applicant's leadership awarded her a Department of the Army Certificate of Achievement for her performance during her unit's Army Readiness Training and Evaluation Program evaluation. On 7 December 1988, the applicant's

chain of command awarded her the U.S. Army South Certificate of Achievement because of the outstanding stamina, physical strength, and courage she displayed during the battalion's "STRAC" competition.

c. On 17 December 1989, the applicant completed her tour in Panama, and orders reassigned her to Fort Drum, NY. On 16 January 1990, Permanent Orders (PO) awarded her the Army Achievement Medal (3rd Award) for meritorious service, during the period 4 September 1987 to 15 December 1989. On 18 January 1990, the applicant arrived at Fort Drum.

d. On 30 March 1990, the applicant immediately reenlisted for 4 years; as a reenlistment option, the applicant opted for reassignment to the Caribbean. On 21 June 1990, the applicant's leadership awarded her the 10th Mountain Division (Light Infantry) Certificate of Achievement after the Primary Leadership Development Course cadre selected her for the Commandant's List. On 29 August 1990, the applicant took an Army Physical Fitness Test (APFT), and she scored 294 points out of a possible 300.

e. In or around October 1990, the applicant received reassignment instructions for Panama, and she arrived at Fort Clayton, Panama, on 8 November 1990. Effective 1 December 1990, the applicant's chain of command promoted her to sergeant (SGT)/E-5. On 6 March 1991, the applicant completed an APFT, during which she achieved 224 points; her lowest scoring event was sit-ups, for which she earned 61 points.

f. On 27 May 1992, the applicant took a record APFT and scored 221 points; respectively, she earned 62 points on the sit-ups event, 75 points for push-ups, and 84 points on the 2-mile run. On 23 October 1992, she completed another record APFT; her total score was 192, but she failed the sit-ups event, scoring less than the minimum of 60 (52 points). Her DA Form 705 (APFT Scorecard) also indicated she was overweight, but that she was "on program."

g. On or about 8 April 1993, an Army Medical Officer issued the applicant a temporary physical profile (DA Form 3349) for hypothyroidism; a Standard Form (SF) 544 (Statement of Patient's Treatment) states the applicant had "problems with dyspnea and weight gain associated with the hypothyroidism that is presently uncontrolled. It will take 2 to 3 months to correct it."

h. On 19 August 1993, the applicant participated in an APFT and weigh-in; she failed the sit-up event, scoring 55 points, and her body fat percentage was 1.83 percent above what the Army allowed. On 23 August 1993, the applicant's company commander counseled her, using two DA Forms 4856 (General Counseling Form).

(1) The commander advised the applicant that because she had failed the APFT and had exceeded weight standards, the command had initiated a flagging action against her, and that she could be subject to possible separation action.

(2) In addition, the commander informed the applicant that it was her responsibility to achieve body fat standards and to have her weight periodically recorded; the commander gave her a goal of 3-8 pounds of weight loss per month.

i. On 29 September 1993, the unit completed a DA Form 5501-R (Body Fat Content Worksheet (Female)), pertaining to the applicant; the form showed the applicant exceeded Army body fat percentages by 0.16 percent.

j. On 15 October 1993, the applicant participated an APFT and weigh-in; she failed the 2-mile run event, scoring a total of 32 points, and was found to be 1.72 percent over the allowable body fat percentage.

k. On 4 November 1993, the applicant's company commander advised her, via memorandum, that he was initiating separation action against the applicant, under the provisions of chapter 13 (Separation for Unsatisfactory Performance), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The reasons for his proposed action were the applicant's failure to pass the APFT, her being overweight, and her poor potential for continued productive military service.

l. On or about 4 November 1993, the applicant affirmed she had been informed of the basis for her pending separation action and was advised of her rights and the effect of waiving those rights. The applicant elected to waive her right to personally appear with counsel before an administrative separation board as well as her right to counsel; additionally, she chose not to submit statements in her own behalf. No counsel signed the document recording the applicant's elections.

m. On 4 November 1993, the applicant's company commander submitted his separation recommendation to the separation authority; he recommended the applicant receive an honorable character of service. The applicant's available service record is void of the separation authority's approval action; however, on 16 November 1993, Headquarter, U.S. Army South orders directed the applicant's reassignment to Fort Jackson, SC for separation processing.

n. On 30 November 1993, the Army honorably released the applicant from active duty and transferred her to the U.S. Army Reserve to complete the remainder of her military service obligation. Her DD Form 214 shows she completed 6 years, 8 months, and 4 days of net active duty service. In addition, the form lists the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "2"
- Marksmanship Qualification Badge

(2) Item 25 (Separation Authority): "AR 635-200, CHAP 13."

(3) Item 26 (Separation Code): "LHJ."

(4) Item 28 (Narrative Reason for Separation): Secretarial Authority

4. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

5. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting to change her narrative reason for separation. The applicant asserts military sexual trauma (MST) as a mitigating factor in her discharge.

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:

- The applicant enlisted in the Regular Army on 27 March 1987.
- On 6 October 1988, the applicant's leadership awarded her a Department of the Army Certificate of Achievement.
- On 30 March 1990, the applicant immediately reenlisted for 4 years.
- Her records reflect a decline in APFT scores over time.
- 29 August 1990, 294/300
- 6 March 1991, 224/300
- 27 May 1992, 221/300
- 23 October 1992, 192/300 (failed sit-ups event and overweight but on the "program")
- On 8 April 1993 she was put on a temporary profile for hypothyroidism.
- On 19 August 1993, the applicant participated in an APFT and weigh-in; she failed the sit-up event, scoring 55 points, and her body fat percentage was 1.83 percent above what the Army allowed. On 23 August 1993, the applicant's company commander counseled her, using two DA Forms 4856 (General Counseling Form). She was notified she was flagged and set a goal for weight loss goal.
- On 29 September 1993, the unit completed a DA Form 5501-R (Body Fat Content Worksheet (Female)), pertaining to the applicant; the form showed the applicant exceeded Army body fat percentages by 0.16 percent.
- On 15 October 1993, the applicant participated an APFT and weigh-in; she failed the 2-mile run event, scoring a total of 32 points, and was found to be 1.72 percent over the allowable body fat percentage.
- On 4 November 1993, the applicant's company commander advised her, via memorandum, that he was initiating separation action against the applicant under AR 635-200, chapter 13 – unsatisfactory performance. The reasons for his proposed action were the applicant's failure to pass the APFT, her being overweight, and her poor potential for continued productive military service.
- On 30 November 1993, the Army honorably released the applicant from active duty and transferred her to the U.S. Army Reserve to complete the remainder of her military service obligation.

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, her ABCMR Record of Proceedings (ROP), 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 minimal data was available. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts she was sexually harassed by an E-7 and when she reported it, she was retaliated against and discharged under a chapter 13, "unsatisfactory performance." The applicant also asserts that the E-7 was court martialled, and the commander was aware of dozens of reports of sexual harassment but because he was a friend to the commander, no action was taken. The applicant is requesting her narrative reason for separation be changed (the applicant was honorably discharged).

e. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. Her service record and supporting documents did not contained her service treatment records (STR), though there were some records from her APFTs and separation file that provided medical data. The applicant's service record reflects a high performing soldier, who received awards and accolades to reflect her achievements, leadership, and academic abilities. Evidence reflects she was a high performer when it came to the APFT as well (294/300 on 29 August 1990). However, her scores continued to drop (as recorded above) until she had a failing APFT on 23 October 1992 (192/300, failed the sit-up event and was overweight). She was placed on a profile on 8 April 1993 for hypothyroidism. As is reflected in her separation physical, her hypothyroidism and the medication being used to treat it were causing weight gain. The applicant completed a mental status exam as part of her separation process, on 2 September 1993. Her presentation was unremarkable/normal, there was no mental health diagnosis, and she was cleared for whatever action was deemed appropriate by command. During her separation physical, on her Report of Medical History, she did indicate depression and excessive worry (as well as other physical health concerns, to include her thyroid and weight gain concerns). The medical history also seems to reflect, "bad pregnancies," gestational diabetes and miscarriages. There is no mention of her sexual harassment/MST in her service, medical, nor separation records.

f. Per the applicant's VA EHR, she is not service connected, has not been seen for any mental health encounters, and holds no diagnoses through the VA. Through review of JLV, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health diagnoses, nor mental health encounters. No other medical records were provided.

g. It is the opinion of the Agency Behavioral Health Advisor there is no evidence, outside of self-report, that the applicant had a mitigating experience, however per Liberal Consideration, the applicant's contention is sufficient to warrant the board's consideration.

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 asserts a mitigating experience (MST). She also asserts that after she reported, she was retaliated against.

(2) Did the condition exist or experience occur during military service? Yes, the MST/sexual harassment reportedly occurred during her time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was honorably discharged though she is requesting her narrative reason for separation be changed, presumably to a more favorable narrative. The applicant asserts she experienced sexual harassment and retaliation. There is insufficient evidence of sexual harassment, however per liberal consideration, her assertion is enough. There is evidence that she had a medical condition that reportedly impacted her weight, and therefore likely her overall physical fitness. In addition, her medical record reflects several other potentially difficult/traumatic events occurring during her service (difficult pregnancies, pregnancy loss). That said, experiencing an MST or harassment can often lead to symptoms of depression, anxiety and trauma which could impact motivation, weight loss/gain, eating habits, and energy. Hence, there is a nexus between MST and a significant change in performance, which is evident in this applicant's record. This advisor recommends a change in her narrative reason for separation changed to Secretarial Authority.

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, and regulatory guidance. The Board considered the applicant's statement regarding sexual harassment. The Board agreed that the applicant's record indicated that she was a top performer as reflected in her initial APFT scores. However, through no fault of her own, she developed a medical condition that impacted her ability to maintain body weight standards and subsequently discharged for unsatisfactory performance. The Board concluded that her leadership failed to support the applicant in both her professional and her physical medical matters. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief.
2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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 30 November 1993 showing:

- Characterization of Service: Honorable
- Separation Authority: Army Regulation 635-200
- Separation Code: JFF
- Reentry (RE) Code: 1
- Narrative Reason for Separation: Secretarial Authority

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S):

1. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all authorized awards and decorations.
2. PO awarded the applicant the Army Achievement Medal (3rd Award).
3. Amend the applicant's DD Form 214, ending 30 November 1993, by adding the Army Achievement Medal (3rd Award).

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, United State Code, section 1556 (Ex Parte Communications Prohibited) 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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Section II (Secretarial Authority), paragraph 5-3 (Policy). The separation of enlisted personnel for the convenience of the Government was the prerogative of the Secretary of the Army and was to be accomplished only by his/her authority. The separation of any enlisted member of the Army under this authority will be based on Secretary of the Army determination that separation was in the best interests of the Army. The Secretary of the Army could issue either an honorable or under honorable conditions character of service.

b. Under chapter 13:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances were such that the Soldiers' retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldiers would continue to be disruptive influences in present and future assignments

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian

occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

4. 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.

5. 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.

6. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the preparation of the DD Form 214. The regulation directed DD Form

214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for completing entries for the Soldier's SPD and narrative reason for separation.

7. AR 635-5-1, in effect at the time, stated Soldiers released from active duty under chapter 13, AR 635-200, received the SPD of "LHJ" and the narrative reason for separation of "Unsatisfactory Performance."

//NOTHING FOLLOWS//