

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230003765

APPLICANT REQUESTS: an upgrade or her uncharacterized service to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 28 December 2022
- self-authored statement, 28 December 2022
- Orders 313-00260, 9 November 1996
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 November 1996
- Veterans Affairs decision, 21 April 2022
- National Personnel Records Center (NPRC), 6 October 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, the correction to her records should be made because her discharge was medically related to and as a result of sexual assault and injury. It was not dishonorable due to her conduct.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 29 November 1995, for a period of 8 years. She entered active duty for completion of initial active duty service on 23 May 1996.
4. DA Form 2-1 (Personnel Qualification Record) shows the highest rank she obtained was the rank/grade of private/E-2 (PV2) with a date of rank of 23 May 1996.
5. A memorandum from the applicant's immediate commander, shows proposed action for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 11, for Entry Level Status Performance and

Conduct. The commander stated the reason for the proposed action was due to the applicant being unable to meet the physical demands of the Army.

6. A DA Form 4856 (General Counseling Form) on 22 October 1996, shows the applicant's Sergeant Major (SGM) concurred with the commander's recommendation for discharge under the provisions of AR 635-200, Chapter 11, due to failure of the Army Physical Fitness Test (APFT).

7. She acknowledged notification of the proposed separation. She understood if approved she would receive an entry level separation with uncharacterized service. She did not desire to consult with counsel, nor did she desire to make statement(s) in her own behalf.

8. On 16 October 1996, the applicant's immediate commander, initiated action for separation under the provisions of AR 635-200, paragraph 11-3a.

9. On the same date, the separation authority approved the recommended entry level separation, with uncharacterized service. Stating the applicant would not be transferred into the Individual Ready Reserve.

10. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 15 November 1996, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct, in the grade of PV2. Her service was uncharacterized, with separation code JGA and reentry code 3. She completed 5 months and 23 days of net active service this period. She was not awarded a military occupational specialty.

11. The applicant additional provides:

a. Correspondence from the NPRC stating her type of discharge is shown as uncharacterized and it defines the uncharacterized entry level as the first 180 days of continuous active duty or active duty for training. The separation initiated while a member is in entry level status may be described as an "uncharacterized entry-level separation".

b. Department of Veterans Affairs benefits letter, dated 21 April 2022, shows the applicant is 100% disabled effective 16 January 2022.

12. There is no indication the applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge within that Board's 15-year Statute of Limitations

13. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an

entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, an ABCMR denial (28 January 1998, AC96-10784A), the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her 15 November 1996 uncharacterized discharge. On her DD Form 149, she indicates that PTSD and Sexual assault/ harassment are related to her request. She states:

"The correction should be made because my discharge was medically related to and as a result of sexual assault & injury, not due to dishonorable conduct of myself."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows the former USAR Soldier entered active duty for initial entry training on 23 May 1996 and was discharged 15 November 1996 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996), for falling below entry level performance and conduct standards.

d. On 22 October 1996, SGM [REDACTED] the USAR liaison, counseled her on her agreement with the applicant's company commander she be discharged under provisions in chapter 11 of AR 635-200 due to failure of her Army physical fitness test (APFT). The application concurred with this counselling.

e. In an undated memorandum, her company commander informed her of his initiation of separation action under provisions in chapter 11 of AR 635-200:

"The reasons for my proposed action are: You are unable to meet the physical demands of the Army. Administrative separation would best serve the interests of the Army."

f. His recommendation for her separation was approved by the battalion commander on 16 October 1996.

g. JLV records show she receives care at Veterans Hospital Administration facilities and has a service-connected disability rating for PTSD related to military sexual trauma (MST).

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims sexual assault/harassment and has service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Applicant claims sexual assault/harassment and has service-connected PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes: As PTSD, particularly that due to MST, is associated with avoidant behaviors and loss of motivation, the condition fully mitigates her APFT failure.

h. Because MST was the cause of her administrative separation, it is the recommendation of the ARBA medical advisor the applicant's discharge be upgraded to Honorable with a narrative reason of Secretarial Authority.

BOARD DISCUSSION:

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 applicant's contentions, military record, and regulatory guidance. Governing regulation provides that a separation will be described as uncharacterized if the separation action is initiated within the first 180 days of active duty service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for her character of service to be rated as honorable or otherwise. After due consideration of the request, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 Board determined 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. Section 1556 of Title 10, U.S. 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.

3. Army Regulation 635-200, in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 11 provides that separation under this chapter applies to Soldiers who are in an entry level status and, before the date of the initiation of separation action, have completed no more than 180 days of continuous active duty and have demonstrated that they cannot or will not adapt socially or emotionally to military life. Entry level status is defined as the first 180 days of continuous active duty. It further states that the character of service for members separated under the provisions of this chapter will be uncharacterized.

d. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Record

(BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Service Disorder; 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.

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 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.

//NOTHING FOLLOWS//