

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230005021

APPLICANT REQUESTS: an upgrade of her under honorable conditions (general) discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- License and Certificate of Marriage
- Department of Veterans Affairs (VA) Rating Decision
- Letter from VA

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 she had been using drugs and sought assistance from her non-commissioned officer (NCO) in order to receive help quitting them. She further states that while serving in the Army in November 2002, she was diagnosed with bipolar disorder at an inpatient treatment facility and found to have been self-medicating with illegal substances. She was so desperate to quit drugs that she reached out to her NCO instead of the drug center on base. Had she sought treatment at the drug center instead of her NCO, she would not have been prosecuted. After being diagnosed with bipolar disorder and being properly medicated, she has not used illegal drugs or had any behavioral legal issues in over 20 years. She would have requested an upgrade sooner but did not realize her mental illness diagnosis could be considered a contributing factor.

3. The applicant enlisted in the Regular Army on 19 January 2000 for a period of 5 years. Upon completion of initial entry training, she was assigned to a unit at Fort Sam Houston, TX. She was promoted to the SPC/E-4 on 1 November 2001.

4. On 2 July 2002, the applicant accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for, conspiring with another Soldier to smuggle controlled substances into the U.S.; being derelict in her duties by willfully failing to get an authorized pass prior to traveling to Laredo Mexico; wrongfully possessing valium, a Scheduled IV controlled substance; and wrongfully using valium. Her punishment consisted of reduction from SPC to private first class (PFC)/E-3, forfeiture of \$561.00 per month for two months, suspended, to be automatically remitted if not vacated before 28 December 2002; extra duty for 45 days, and a verbal reprimand.
5. On 18 and 19 September 2002, the applicant underwent a pre-separation medical examination and was determined to be medically qualified for separation.
6. On 19 September 2002, the applicant underwent a Mental Status Evaluation and was determined to have the mental capacity to understand and participate in separation proceedings.
7. On 24 September 2002, the suspended portion of the applicant's punishment was vacated due to the applicant, on numerous occasions between on or about 1 June 2002 and 16 August 2002, violating a lawful general regulation by wrongfully fraternizing with initial entry training (IET) trainees; and on numerous occasions between on or about 1 June 2002 and 16 August 2002, wrongfully using marijuana.
8. On 20 December 2002, the applicant accepted field grade NJP under the provisions of Article 15, of the UCMJ for on numerous occasions between on or about 28 May 2002, violating a lawful general regulation by wrongfully fraternizing with IET trainees; and on numerous occasions between on or about 1 June 2002 and 16 August 2002, wrongfully using marijuana. Her punishment consisted of reduction from PFC to private/E-1; forfeiture of \$552.00 per month for two months, suspended, to be automatically remitted if not vacated before 17 June 2003; and restriction for 45 days.
9. On 14 January 2003, the applicant's immediate commander notified the applicant of her intent to initiate actions to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 12c, for commission of a serious offense. The specific reasons cited for this action were: conspiracy; dereliction of duty; wrongful possession of valium; wrongful use of valium; wrongful use of marijuana; and fraternization. The applicant was advised that she was being recommended for a general, under honorable conditions discharge. The applicant acknowledged receipt of the proposed separation notification on 14 January 2003.
10. On 16 January 2003, the applicant acknowledged that she was advised of the reasons for separation and of the rights available to her. She consulted with counsel and submitted a conditional election of rights wherein she elected to submit statements

in her own behalf. She also elected to waive consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government. The applicant submitted three statements in support of her rebuttal.

a. In a self-authored statement, the applicant asked the separation authority to either suspend the separation action so she could remain on active duty or to upgrade her discharge to honorable to avoid prejudice for her past mistakes. She apologized for her behavior and explained the steps she was taking to improve.

b. The Chemical Dependency Director for the behavioral healthcare facility where the applicant was receiving treatment at the time advised the separation authority that the applicant was doing very well in the treatment program. She also stated the applicant had been diagnosed with a disease that is like cancer and when it comes to moral behavior the disease takes over and spreads like cancer and creates hardships for the person with the addiction. She encouraged the separation authority to look at the American Disability Act and understand the importance of allowing the applicant to maintain her position with the Army.

c. The applicant's sponsor at Narcotics Anonymous asked the separation authority to consider the fact that the applicant is a good person who made bad choices. He stated he believed she was committed to overcoming her addiction and that he would do all he could to help her along the road to recovery.

11. On 16 January 2003, the applicant's immediate commander formally recommended her separation prior to the expiration of her term of service under the provisions of AR 35-200, Chapter 14, by reason of commission of a serious offense. The applicant's interim commander concurred.

12. On 27 January 2003, the separation authority approved the recommendation for separation, and directed the applicant be issued a general under honorable conditions discharge.

13. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show she was discharged from the Regular Army on 7 February 2003, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct, with separation code "JKQ" and reentry code "3." Her service was characterized as Under Honorable Conditions (General). She was credited with completion of 3 years and 19 days of net active service this period. Although she had enlisted for a period of 5 years, she was credited with completion of her first full term of service in Item 18 (Remarks).

14. On 15 June 2023, a member of the Army Review Board Agency staff requested the applicant provide a copy of medical documents in support of her PTSD and other

mental health conditions and afforded her a 30-day window to respond. To date, the applicant has not responded.

15. The applicant provides:

a. A License and Certificate of Marriage, which shows the applicant was married on 14 October 2006 and her last name was officially changed from the name she used during her period of service to the name she uses now.

b. A VA rating Decision shows the VA granted the applicant service connection for unspecified bipolar disorder with an evaluation of 30 percent effective 20 December 2022.

c. A letter from the VA, dated 23 March 2023, was provided to the applicant to guide her through the information she should know and steps she may take now that the VA had made a decision about her benefits.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting that her Under Honorable Conditions (General) discharge be upgraded to Honorable due to being diagnosed with a Bipolar Disorder and consequently self-medicating with illicit drugs while on active duty.

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 19 Jan 2000. She was awarded the National Defense Service Medal during her time in service.
- On 2 July 2002, applicant received a field grade Article 15 for, "conspiring with another Soldier to smuggle controlled substances into the U.S.; being derelict in her duties by willfully failing to get an authorized pass prior to traveling to Laredo Mexico; wrongfully possessing valium...and wrongfully using valium."
- On or about 20 Dec 2002, applicant received another field grade Article 15 fraternizing with IET trainees (28 May 2002) and using marijuana on or between 1 June 2002 and 16 August 2002. Following these infractions, the Commander initiated separation actions (14 Jan 2003) based on "commission of a serious offense."

- The applicant's separation packet was available for review. Included is the applicant's service record including her DD Form 214 (Report of Separation from Active Duty). It indicated that the Army discharged the applicant "Under Honorable Conditions" on 07 Feb 2003.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed includes the applicant's completed DD Form 149, her ABCMR Record of Proceedings (ROP), Personal Statement, her DD Form 214, as well as documents from her service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. The applicant asserted that PTSD/MST and a bipolar disorder were mitigating factors in her discharge. She also contended her substance abusing episodes were due to the impact of her behavioral health conditions. Her service record and supporting documents did provide some service treatment records. A Mental Status Evaluation (19 Sep 2002) concluded there was an absence of any psychiatric disorders aside from cannabis abuse, leading the psychologist to clear her for any administrative actions. A treatment note from Community Mental Health, BAMC, San Antonio (03 Oct 2002) identified "symptoms of mixed anxiety/depression over the past 7-8 months." An earlier note (26 Sep 2002) from CMH, BAMC had diagnosed her with Adjustment Disorder with Depressed Mood. A Mission Vista Behavioral Health System note (19 Dec 2002) maintained she had been working well in their substance abuse program with a recommendation for retention in the Army. The supporting documents also contained a VA rating decision (22 Mar 2023) of 30% service connection for unspecified bipolar disorder. Based on the above documentation, there is evidence the applicant had been diagnosed or treated for behavioral health conditions that occurred during her time in service.

e. Per the applicant's VA EHR, she is service connected at 30% for an unspecified medical or behavioral health condition. Her first outpatient encounter note was on 29 May 2012. A Mental Health Team Consult (18 Jul 2012) with a psychologist indicated, "grieving over her father whom passed away a yr ago. Vt reports feeling the guilt of having to make a choice of taking him off life support. Vt reports of having increased appetite and chronic insomnia. Vt states her mind is always racing which makes it difficult for her to sleep. Vt states sleeping 6 hrs on a good night; however reports of typically sleeping 3 hrs each night. Vt reports being diagnosed with bipolar disorder in 2002 while she was serving in the military. Vt states being on many medications for her bipolar such as Depakote, Zoloft, Trazodone, and Wellbutrin. Vt reports feeling like a zombie due to all the medications she had to take at once; therefore vt discontinued taking them. In addition, vt reports smoking Cannabis to help with her bipolar but reports knowing it is not the best option due to having kids." In a Mental Health Medication Management Note (04 Jan 2023) the psychiatrist indicated, "Hx Bipolar Disorder who presents for evaluation and treatment. Dx with Bipolar Disorder in 2001, with

mania/depression since age 13/14. Numerous medication trials, manic sz of excessive cleaning, lack of need for sleep, ruminative thoughts, increased alcohol use, increased energy, racing thoughts, distractibility, used to cycle every 2-3 weeks. Stable for several years on Lamotrigine and Trazodone. Plan to continue.”

f. In summary, applicant is service connected at 30% for a bipolar disorder (per rating decision in supporting documents). There is considerable documentation she has been treated for a bipolar disorder by VA which had been initially experienced and documented during applicant’s time in service. After reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is sufficient evidence of partially mitigating conditions. Unspecified bipolar and related disorder significantly contributed to the specific misconduct of substance abuse, disobeying orders and dereliction of duties. However, conspiracy to smuggle drugs into the United States is not associated with an Unspecified bipolar and related disorder.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, she experienced Unspecified bipolar and related disorder which contributed to her substance abuse, disobeying orders and dereliction of duties while still on active duty. The bipolar disorder was subsequently identified by VA behavioral health providers to include a VA rating decision of 30%.

(2) Did the condition exist or experienced occur during military service? Yes, there is considerable evidence she initially encountered Unspecified bipolar and related disorder while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it partially mitigates for her misconduct of drug abuse, disobeying orders and dereliction of duties, as bipolar related conditions are often associated with such misconduct. However, this condition does not mitigate for conspiracy to smuggle illegal drugs into the United States.

#### 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 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, the applicant’s record of service, the frequency and nature of the applicant’s misconduct and the reason for separation. The applicant was discharged from active duty due to Misconduct, consisting of conspiracy; dereliction of duty; wrongful possession of valium; wrongful use of valium; wrongful use of marijuana; and fraternization. She received a general discharge. The Board

considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding sufficient evidence of partially mitigating conditions. Unspecified bipolar and related disorder significantly contributed to the specific misconduct of substance abuse, disobeying orders and dereliction of duties. However, conspiracy to smuggle drugs into the United States is not associated with an Unspecified bipolar and related disorder. The applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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 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.

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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 three 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 three-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 the Army Review Boards Agency (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 sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.



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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (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 stress 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.

6. 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.

//NOTHING FOLLOWS//