

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230005793

APPLICANT REQUESTS: Reconsideration of her previous request for upgrade of her under honorable conditions (general) characterization of service to honorable.

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), 11 January 1980
- Veterans Affairs (VA) rating decision letters, 15 August 2016
- Bachelor of Science Degree Certificate, 27 October 2019
- VA service-connected disability compensation letter, 28 April 2022
- General Education Certificates of Completion, 10 September 2017, 26 February 2020, 31 August 2022, and 14 December 2022.

FACTS:

1. Incorporated herein by reference are military records that were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC83-08352 on 25 July 1984.
2. The applicant states she was discharged due to behavior connected to an undiagnosed mental disorder of post-traumatic stress disorder (PTSD). Her mental illness was not fully documented, diagnosed, or treated during her service, which led to her condition getting worse over time. After 36 years of sleepless nights, panic attacks, nightmares, anxiety, doctor visits, medications, and therapy, she was diagnosed with PTSD by the VA, on 29 February 2016. She believes her PTSD contributed to the circumstances that led to her being discharged from the Army and asks for relief.
3. The applicant enlisted in the Regular Army on 8 May 1978 for 3 years. The highest rank/grade she held was private first class/E-3.
4. Three DA Forms 4187-E (Personnel Actions) show, effective 15 February 1979, the applicant's unit reported her absent without leave (AWOL), and on 30 March 1979, she

was dropped from the rolls. Her duty status changed to return to military control when she turned herself in to military authorities on 4 May 1979.

5. On 10 May 1979, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows she was charged with being AWOL from on or about 1 April 1979 and did remain absent until on or about 4 May 1979.

6. On 3 July 1979, she accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 26 June 1979, absent herself from her unit and did remain so absent until on or about 28 June 1979. Her punishment was reduction to private/E-1 and forfeiture of \$94.00 pay for one month.

7. The applicant consulted with legal counsel on 2 July 1979.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a under other than honorable conditions (UOTHC) discharge, and the procedures and rights that were available to her.

b. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to the charge 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 VA, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws.

c. She elected to submit a statement in her own behalf, stating she was an outpatient at the U.S. Public Health Hospital when the Army reported her as AWOL. She attempted to contact her commander and unit to let them know her status via the Red Cross, writing her commander a letter and calling them via Staff Sergeant ■, located in ■. She continued her treatment at the Hospital until the Doctor she was seeing put her back on duty status on 2 May 1979. Her commanding officer from Germany sent her a letter advising her if she did not return to military control, court-martial action would be taken against her, which could lead to her receiving a bad-conduct discharge, so she turned herself into military control at Fort Mead, MD, where she was sent to Fort Dix, NJ, and placed in pre-trial confinement. She requested a Chapter 10 discharge due to the mental and physical stress, strain, and constant depression she felt being four and a half months pregnant in pre-trial

confinement. She put in for a compassionate reassignment and is hopeful her statement helps her chain of command make a fair and legal decision on her part.

8. On 24 July 1979, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

9. On 13 December 1979, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and ordered the issuance of an UOTHC discharge with separation program designator code "JFS."

10. The applicant was discharged accordingly on 11 January 1980, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. She received a Separation Code of "JFS" and a reenlistment code "3", "3B", and "3C." Her DD Form 214 contains the following entries:

a. She completed 1 year, 5 months, and 14 days of net active service with 5 months and 29 days of foreign service during the period covered.

b. Block 18 (Remarks) the entry "EXCESS LEAVE 187 DAYS FROM 790705 TO 800111."

c. Block 29 (Dates of Time Lost During This Period): 1 March 1979 to 3 May 1979 and 26 June 1979 to 27 June 1979.

11. The applicant provides:

a. Two VA letters showing a service-connected disability rating of 50 percent for PTSD, and the monthly monetary award she is receiving from the VA due to her rating.

b. One Bachelor of Science Degree certificate from [REDACTED], and four certificates of completion for various educational training she attended from 10 September 2017 to 14 December 2022.

12. On 22 September 1981 and 1 February 1983, the Army Discharge Review Board (ADRB) reviewed the applicant's requests for an upgrade of her discharge. On both occasions the ADRB found her discharge to be both proper and equitable under the circumstances and voted to deny her request.

13. The ABCMR considered the applicant's request for upgrade on 25 July 1984. After reviewing the application and all supporting documents, the Board determined relief was

warranted. The Board found the evidence presented did demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

14. On 4 September 1984, having approved the findings, conclusions, and recommendation of the ABCMR, the acting Deputy Assistant Secretary, Department of the Army Review Boards and Personnel Security, directed the issuance of a General Discharge Certificate.

15. The applicant's DD Form 214 was voided and reissued to show her characterization of service as under honorable conditions (general) and the narrative reason for separation as Secretarial Authority.

16. Regulatory guidance in effect at the time provided discharges under the provision of AR 635-200, Chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial. An UOTHC characterization was normally considered appropriate.

17. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of her prior request to upgrade her characterization of service from under honorable conditions (general) to honorable. She contends she had mental health conditions including PTSD that mitigate her misconduct.

b. 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 the Regular Army on 8 May 1978; 2) The applicant was AWOL from 30 March 1979- 4 May 1979; 3) On 3 July 1979, she accepted non-judicial punishment for being AWOL from 26-28 June 1979; 4) The applicant was discharged on 11 January 1980, Chapter 10, for the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service; 5) The ABCMR considered the applicant's request for upgrade on 25 July 1984. After reviewing the application, the Board determined relief was warranted, and her characterization of service was upgraded to as under honorable conditions (general) and the narrative reason for separation changed to Secretarial Authority.

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

d. On her application, the applicant noted mental health conditions including PTSD are related to her request, as a contributing and mitigating factors in the circumstances that resulted in her separation. There is evidence the applicant was in treatment for “physical stress, strain, and constant depression” at the U.S. Public Health Hospital when she was reported AWOL in May of 1979. A review of JLV provided sufficient evidence the applicant has been in consistent behavioral health care at the VA for anxiety, depression, and PTSD related to childhood trauma since 2015. While the applicant did not experience military sexual trauma, she did experience significant difficulty in the military as a result of her earlier experiences, which exasperated her behavioral health symptoms during her active service. She has been diagnosed with service-connected PTSD since 2016 (50%), and she continues in behavioral health care presently.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigated her misconduct.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing mental health conditions including PTSD, which mitigates her misconduct. She was diagnosed with service-connected PTSD by the VA in 2016.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she was experiencing mental health conditions including PTSD, which mitigates her misconduct during active service. She was diagnosed with service-connected PTSD by the VA in 2016.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant has been diagnosed with service-connected PTSD. Avoidant behaviors such as going AWOL are often a natural sequelae to PTSD. In addition, the applicant was in care for her behavioral health symptoms in a military hospital when she was found to be AWOL. Therefore, it is recommended applicant’s discharge be upgraded to honorable.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct and the reason for her separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Medical Advisor.

2. The Board concurred with the conclusion of the medical advising official regarding her misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

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 that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AC83-08352 on 25 July 1984. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing her DD Form 214 to show her character of service as honorable.

2/27/2024

X [REDACTED]

CHAIRPERSON  
[REDACTED]

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 1556, 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.
2. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.
  - a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.
  - b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated

service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

3. 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.

4. 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, 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//