

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230005958

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 9 October 1979, to show a different narrative reason for separation, presumably more favorable. Additionally, she requests a personal appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-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, in effect, the reason for her discharge was not as promised by her commander. She was a good Soldier, but she was never allowed to work in her military occupational specialty (MOS). She was placed in an office with a lot of military sexual trauma (MST). She was told the reason for her separation would be "failure to adapt to military life." Instead, it states "failure to demonstrate standards suitable for retention." Is tolerating MST a requirement for retention?
3. The applicant enlisted in the Regular Army on 8 August 1978 for a 3-year period. Upon the completion of initial entry training, she was awarded MOS 26B (Weapons Support Radar Repairer). The highest rank she attained was private first class/E-3.
4. The applicant underwent a mental status evaluation on 17 August 1979. The examining provider determined there was no impression of mental illness. The applicant was deemed mentally responsible and had the mental capacity to understand and participate in board proceedings.
5. She underwent a medical examination on 30 August 1979. The relevant Standard Form 88 (Report of Medical Examination) shows the applicant reported being in good

health with a history of Achilles tendonitis. The examining provider determined she was medically qualified for separation.

6. The applicant's commander initiated a report for suspension of favorable personnel actions (FLAG) on 11 September 1979, by reason of elimination. The commander noted poor attitude, lack of motivation, and lack of self-discipline as reasons for the elimination action.

7. The applicant's immediate commander notified the applicant on 12 September 1979 that he was initiating action to separate her from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, under the Expeditious Discharge Program (EDP), with an honorable characterization of service. As the specific reasons for the proposed action, her commander noted the applicant established patterns that reflected an inability to accept direction from superiors, a lack of cooperation with peers and superiors, and poor job dependability. Instances included failure to respond to direction from a Chief Warrant Officer on 16 and 17 August 1979 when told to operate a radar, and on 22 August 1979 when told to pick up trash during police call. Additionally, she issued a set of insufficiently funded checks.

8. On that same date, the applicant acknowledged receipt of the separation notification. She was advised of the rights available to her and the effect of waiving her rights. She voluntarily consented to the separation and elected to submit a statement in her own behalf, wherein she stated, in effect, the spirit of the commander's statement denoted a mental profile of "calculating, borderline insubordinate" which she denied. Upon entering the military, she maintained motivation, pride of workmanship, and a desire to serve. She had to compromise and become a radar mechanic instead of going into the medical field. An uncontrollable fear of electricity and a confrontation with two military "personalities" led to the deterioration of her emotional control. The check situation was satisfactorily reconciled.

9. On 19 September 1979, the applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-31, by reason of the applicant's inability to accept direction from her superiors, lack of cooperation with both peers and superiors, and poor job dependability.

10. On 25 September 1979, the separation authority approved the recommended separation action and directed the issuance of a DD Form 256A (Honorable Discharge Certificate).

11. Accordingly, the applicant was discharged on 9 October 1979, under the provisions of Army Regulation 635-200, paragraph 5-31, by reason of failure to maintain acceptable standards for retention. Her DD Form 214 confirms her service was

characterized as honorable, with separation code JGH and reenlistment code RE-3. She was credited with 1 year, 2 months, and 2 days of net active service.

12. Regulatory guidance states, individuals discharged under the EDP were issued either a general or honorable discharge characterization of service.

13. In the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

14. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting that her Honorable discharge be upgraded due to experiencing MSTs and sexual harassment during her time in service. She is specifically requesting that the narrative reason for separation be changed based on the assurance of her commander for a less derogatory statement, as well as the negative impact of the MSTs.

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 08 Aug 1978
- On 11 September 1979, Applicant's commander "initiated a report for suspension of favorable personnel actions (FLAG), by reason of elimination...noted poor attitude, lack of motivation, and lack of self-discipline as reasons for the elimination action."
- On 12 September, the commander initiated action to separate applicant from the service. He noted, "applicant established patterns that reflected an inability to accept direction from superiors, a lack of cooperation with peers and superiors, and poor job dependability...on 16 and 17 August 1979 when told to operate a radar, and on 22 August 1979 when told to pick up trash during police call. Additionally, she issued a set of insufficiently funded checks."
- On 19 September 1979, applicant's commander recommended her separation from service due to "inability to accept direction from her superiors, lack of cooperation with both peers and superiors, and poor job dependability."
- The applicant's separation packet is unavailable for review. However, the applicant's service record includes her DD Form 214 (Report of Separation from Active Duty), which shows that the applicant received an honorable discharge on

09 Oct 1979 with narrative reason for separation, "failure to maintain acceptable standards for retention."

c. 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), 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. This applicant asserted that MSTs and sexual harassment were mitigating factors in her discharge. Her service record and supporting documents did contain a Report of Mental Status Evaluation (17 Aug 1979) which indicated she exhibited normal behavior, full orientation, stable mood, clear thinking and "meeting retention standards." Applicant noted on the DD Form 149, "I was a good soldier, but never allowed to work in my MOS. Placed in an office instead - lots of MST." She also queried, "is tolerating MST a requirement for retention." Based on her service record and supporting documents, there is an absence of documented evidence the applicant was diagnosed or treated for mitigating conditions that occurred during her time in service.

e. Per the applicant's VA EHR, she is not service connected for any medical or behavioral health concerns. There are 31 behavioral health entries in VA outpatient encounters ranging from 26 Jul 2022 - 28 Sep 2023. A Neuropsychology Note (27 Mar 2023) indicated, "On measures of psychiatric symptoms and underlying pathology, she endorsed clinically significant symptoms of depression, PTSD, and anxiety. She denied current/active SI, plan, or intent. The veteran does not have clear cognitive impairment, and she is independently managing basic and instrumental activities of daily living." A Neuropsychology Consult (04 Apr 2023) noted, "The veteran has a history of teenage sexual abuse and military sexual trauma. Further, she experienced intimate partner violence (IPV) in her first two marriages. While she denied IPV in her current marriage, she described marital discord and emotional abuse. She has left him twice, though she never followed through with a divorce. She described him using shame and guilt throughout their relationship." She was diagnosed with "No Neurocognitive Disorder, Major Depressive Disorder and PTSD." A Mental Health Crisis Intervention Note (07 Jul 2023) indicated, "the Spouse of a Veteran reached out to the VMCL because they were feeling anxious and needed general support. Spouse stated that Veteran had threatened the Spouse with physical violence. The Spouse stated that they have locked themselves in their bedroom out of fear and would like local PD to be called for safety check. A welfare check was initiated." The VA problem list included "Alcohol Dependence with withdrawal unspecified, "Depression unspecified and Insomnia unspecified."

f. In summary, although she is not service connected for any behavioral health conditions, there is documentation she has been evaluated and treated by VA for

PTSD, as well as documented MST that had been initially experienced 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 some evidence of a mitigating condition (MSTs), sexual harassment and more likely than not trauma/stressor symptoms, that contributed to substandard job performance, lack of motivation, poor attitude, being uncooperative with superiors/peers and mismanagement of personal finances. Despite the rather limited documentation in the VA encounter notes (JLV) to support the contention that the applicant had experienced an MST during her time in service, under liberal consideration, applicant's self-assertion of MST is sufficient to establish occurrence of MST.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, applicant experienced MST (per her report on the ABCMR application and in JLV), sexual harassment and more likely than not trauma/stressor symptoms that contributed to her identified misconduct while still on active duty

(2) Did the condition exist or experience(s) occur during military service? Yes, there is applicant's self-report and JLV treatment notes she initially encountered MST and sexual harassment while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for her substandard job performance, lack of motivation, poor attitude, being uncooperative with superiors/peers and mismanagement of personal finances, as MSTs, sexual harassment and trauma/stressor symptoms are often associated with such misconduct. In accordance with ARBA policy regarding MST and liberal consideration, it is recommended that the applicant's narrative reason for discharge be changed to Secretarial Authority.

BOARD DISCUSSION:

1. 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.

2. After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request, supporting documents and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's period of service and agreed that MST more likely than not contributed to her substandard job performance and should be considered as a mitigating factor. After due consideration of the applicant's request, the Board determined the evidence presented sufficient to warrant a recommendation for relief and a correction to the narrative reason for separation is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 her DD214 for the period ending 9 October 1979 to show in block 28 (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.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

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 ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JGH" and the narrative reason "failure to maintain acceptable standards for retention" are appropriate to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-31h(2), EDP.

5. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

6. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

7. 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.

//NOTHING FOLLOWS//