

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230006286

APPLICANT REQUESTS: her under honorable conditions (general) discharge be upgraded to honorable. Additionally, she requests a personal appearance before the Board via video/telephone.

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)
- Department of Veterans Affairs (DVA) Letter
- Veterans Affairs Problem List

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 at the time of discharge she was dealing with undiagnosed post-traumatic stress disorder (PTSD) due to military sexual trauma (MST) and "Don't Ask Don't Tell" (DADT). She was always a good Soldier. She was just dealing with a lot of things that she was not allowed to seek help with because her superiors would not listen.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 23 September 1985. Her military occupational specialty (MOS) was 57E (Laundry and Bath Specialist).
4. She entered active duty for training on 28 May 1986. She was released from active duty (REFRAD) for training on 10 September 1986 and transferred to the control of the USAR. Her DD Form 214 shows her service was characterized as entry level status. She completed 3 months and 13 days of net active service.
5. She enlisted in the Regular Army on 15 April 1987 for four years. She reenlisted on 27 September 1990 for three years.

6. The applicant was honorably REFRAD on 21 March 1992, by reason of early transition program. Her DD Form 214 shows her MOS was 91R (Veterinary Food Inspection). She completed 4 years, 11 months, and 7 days of net active service. Her awards include the Army Service Ribbon (ASM), Army Lapel Button, National Defense Service Medal (NDSM), Army Good Conduct Medal, and the Noncommissioned Officer Professional Development (NCOPD) Ribbon.
7. The applicant enlisted in the Army National Guard (ARNG) on 22 March 1992. She had multiple unexcused absences between October 1992 and January 1993.
8. The applicant was released from the ARNG on 28 January 1993 and transferred to the USAR. Her National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows she was released for unsatisfactory participation. Her service was characterized as under honorable conditions (general). She completed 10 months and 7 days net service.
9. Orders D-11-399815, dated 20 November 1993, show she was honorably discharged from the USAR.
10. The applicant enlisted in the Regular Army on 29 December 1994 for three years.
11. The applicant was counseled on multiple occasions between October 1995 and February 1996 for dishonored checks, failure to be at appointed place of duty at the appointed time (on five occasions), cancelled and no show for dental exam, failure to show for medical appointment, failure to obey a lawful order, family medical appointment no show, and indebtedness.
12. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on 4 January 1996 for without authority, failing to go at the time prescribed to her appointed place of duty on or about 7 December 1995 and with intent to falsely alter a certain writing, change the date on a medical document, on or about 14 December 1995. Her punishment consisted of reduction to private first class/E-3 and extra duty.
13. A Bar to Reenlistment Certificate, dated 23 February 1996, shows Captain REL___ stated the applicant displayed poor potential for Retention in the Army. She could not train for a job; apathetic, disinterested. Could not follow orders, could not adapt to military life. She had been absent without leave for greater than 1-to-24-hour periods and had continuous indebtedness, reluctance to repay, or late payments. She failed to demonstrate the behavioral attributes of the "Total Soldier" and did not deserve the privilege of continued service.
 - a. She did not desire to submit a statement in her own behalf.

- b. The bar certificate was approved, and she did not appeal the Bar to Reenlistment.
14. DD Form 4187 (Personnel Action), dated 8 March 1996, shows the applicant requested separation in accordance with Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 16-5, 2(b) (Failure to overcome a Bar). The immediate commander recommended approval on the same date.
15. The separation authority approved the recommended separation action on 8 March 1996, and directed the applicant's discharge under the provisions of AR 635-200, Chapter 16. He further directed her service be characterized as under honorable conditions (general).
16. The applicant was discharged accordingly on 25 March 1996. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, Paragraph 16-5a, by reason of non-retention on active duty. She was assigned Separation Code KGH with Reentry Code 3. Her service was characterized as under honorable conditions (general). She completed 1 year, 2 months, and 2 days of net active service. She lost time from 23 January 1996 to 16 February 1996. Her awards include the: Army Good Conduct Medal, NDSM, NCOPD Ribbon, and the ASM.
17. The applicant provides:
 - a. A copy of her DD Form 214 discussed above.
 - b. DVA letter, dated 19 January 2023, shows honorable service for two periods of service and under honorable conditions (general) service from 29 December 1994 to 25 March 1996. Service-connected compensation for PTSD due to MST.
 - c. Veterans Affairs Problem List shows recurrent major depressive episodes, moderate.
18. On 9 August 2023, 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 regarding Sexual Assault (Victim of an Investigation) pertaining to the applicant.
19. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her under honorable conditions (general) discharge be upgraded to honorable. She contends she experienced military sexual trauma (MST) and resultant PTSD along with negative experiences as the result of “Don’t Ask Don’t Tell” (DADT) that mitigated her discharge.

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 15 April 1987, and she was honorably REFRAD on 21 March 1992, by reason of early transition program. The applicant enlisted in the Army National Guard (ARNG) on 22 March 1992; 2) The applicant had multiple unexcused absences between October 1992 and January 1993; 3) The applicant was released from the ARNG on 28 January 1993 and transferred to the USAR. Her National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows she was released for unsatisfactory participation on 20 November 1993. Her service was characterized as under honorable conditions (general); 4) The applicant again enlisted in the Regular Army on 29 December 1994; 5) The applicant accepted nonjudicial punishment (NJP) on 4 January 1996 for failing to go at the time prescribed to her appointed place of duty, and with intent to falsely alter a medical document; 6) A Bar to Reenlistment Certificate, dated 23 February 1996, reported the applicant displayed poor potential for Retention in the Army. She could not train for a job; apathetic, disinterested. Could not follow orders, could not adapt to military life. She had been absent without leave for greater than 1-to-24-hour periods and had continuous indebtedness, reluctance to repay, or late payments; 7) On 8 March 1996, the applicant requested separation for Failure to overcome a Bar; 8) The applicant was discharged on 25 March 1996, Chapter 16-5a, by reason of non-retention on active duty. Her service was characterized as under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant’s military service records. The VA’s Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

d. The applicant reported she experienced MST and resultant PTSD along with negative experiences as the result of “Don’t Ask Don’t Tell” (DADT) that mitigate her discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD as the result of MST. She has also been diagnosed and treated for Major Depression related to her experience of MST. Lastly, the applicant has been awarded VA disability for her service-connected PTSD (70%).

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 partially mitigates 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 experienced MST and resultant PTSD along with negative experiences as the result of DADT. The applicant has been diagnosed with service-connected PTSD as the result of her report of MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she experienced MST and resultant PTSD along with negative experiences as the result of DADT while on active service. The applicant has been diagnosed with service-connected PTSD as the result of her report of MST by the VA.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant has been diagnosed with service-connected PTSD as the result of her report of MST. She also reported negative experiences as the result of DADT. Some of the applicant's pattern of misconduct can be natural sequelae of her reported negative experiences and resultant PTSD. Specifically, the applicant was engaged in avoidant behavior such as repeatedly being absent without leave or being late to her appointed place of duty. This type of avoidant behavior is often associated with PTSD and the negative or traumatic experiences she reported. However, there is no nexus between the applicant's report of MST, negative experiences associated with DADT, and resultant PTSD and her indebtedness and forging medical documents. These types of misconduct are not natural sequelae of her experiences and mental health conditions, and they do not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, statements and contentions, the evidence in the records, the ARBA Medical Advisors opinion, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

3. The Board determined there was sufficient evidence available for fair and impartial consideration of her case, without a personal appearance hearing.

4. The Board concurred with the ARBA Medical Advisor's opinion, that there is no nexus between the applicant's report of MST, negative experiences associated with DADT, and resultant PTSD and her indebtedness and forging medical documents. These types of misconduct are not natural sequelae of her experiences and mental health conditions, and they do not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.

2. The Board also concurs with the administrative corrections following the signature block.

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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):

The applicant completed a period of initial active duty for training (IADT). She was awarded a MOS at the completion of training and was transferred back to the USAR. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue her a DD Form 214 for the period ending 10 September 1986 showing her character of service as Honorable.

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, USC, Section 1556, 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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. Soldiers denied or ineligible for continued active-duty service may be separated, upon request, as provided below:

c. Paragraph 16-5. Provides for the voluntary separation of soldiers denied reenlistment. Soldiers denied reenlistment may be voluntarily separated before their expiration term of service (ETS): Department of the Army (DA) imposed bars to reenlistment: (1) Soldiers who perceive that they will be unable to overcome a Headquarters DA (HQDA) bar to reenlistment will be discharged upon their request unless disapproval of the request is required or permitted under other provisions of this regulation. Soldiers may request discharge at any time after receipt of the HQDA bar to reenlistment from unit commanders or upon notification that an appeal of the bar to reenlistment was disapproved. (2) The soldier's request will be submitted on DA Form 4941-R (Statement of Option).

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 Service 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 grounds.

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//