

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230006300

APPLICANT REQUESTS:

- reconsideration of her previous request to upgrade her under other than honorable conditions discharge to general, under honorable conditions
- in person appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160007595 on 1 May 2018.

2. The applicant states, in effect, she believes her discharge should be changed to general, under honorable conditions due to the unstable circumstances that she was facing at the time. She served on active duty with no other issues at the time. She completed basic training and advanced individual training with no proven issues. She went home on leave and her life took a turn for the worse. She thought all this time that her discharge was general, under honorable conditions, and she is just asking that it be changed. On her application she marked post-traumatic stress disorder (PTSD) and other mental health conditions were issues and conditions related to her request for an upgrade.

3. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 12 June 1997. She held military occupational specialty 92A (Automated Logistical Specialist).

b. A DA Form 4187 (Personnel Action) shows she went absent without leave (AWOL) on 15 February 2009. Her duty status changed from AWOL to dropped from rolls (DFR) on 17 March 1999.

c. She surrendered to military authorities at Fort Brag, NC on 7 April 1999 and was transferred to the Personnel Control Facility at Fort Knox, KY.

d. Court-martial charges were preferred against the applicant on 19 April 1999. Her DD Form 458 (Charge Sheet) shows she was charged with one specification of being AWOL from her organization, 64th Replacement Company, Germany, on or about 16 February 1999 to on or about 7 April 1999.

e. On 19 April 1999, after consulting with legal counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. In doing so, she acknowledged that the charges preferred against her under the Uniformed Code of Military Justice (UCMJ), authorized the imposition of a bad conduct or dishonorable discharge. She further acknowledged:

- she had not been subjected to coercion with respect to her request for discharge
- she had been advised of the implications that were attached to it by submitting the request
- by submitting the request, she was acknowledging she was guilty of the charge(s) against her or of a lesser included offense(s) therein contained which also authorized the imposition of a bad conduct or dishonorable discharge
- she stated that under no circumstances did she desire further rehabilitation, for she had no desire to perform further military service
- she further understood that she may be discharged under conditions which were other than honorable and furnished an Under Other Than Honorable Discharge certificate
- 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 Veteran's Administration
- she could be deprived of her rights and benefits as a veteran under both Federal and State law
- she could encounter substantial prejudice in civilian life because of an under other than honorable discharge
- she understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency or the ABCMR
- she was advised she could submit any statements in her own behalf, and elected not to do so

f. On 24 November 1999, the immediate commander recommended approval and issuance of a discharge under other than honorable conditions. The commander noted

that the applicant's conduct rendered her triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. He also stated there did not appear to be any reasonable ground to believe the applicant was, at the time of her misconduct, mentally defective, deranged, or abnormal.

g. The separation authority approved the recommended discharge on 18 December 1999, directed the applicant be reduced to the lowest enlisted grade unless already serving in that grade, and be issued an under other than honorable conditions discharge.

h. The applicant was discharged on 19 June 2000. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and her service was characterized as under other than honorable conditions. She completed 2 years, 10 months, and 18 days of net active service during the covered period. Additionally, her DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon, and the M16 Rifle Marksman Qualification Badge
- Item 18 (Remarks): Member has not completed first full term of service
- Item 29 (Dates of Time Lost During this Period): 16 February 1999 to 6 April 1999

4. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within that board's 15-year statute of limitations.

5. On 29 August 2023, the Director, Case Management Division, sent a letter to the applicant requesting that she provide a copy of the Veterans Administration medical documents or any other medical documents that support her issue of PTSD and other mental health conditions, however she did not respond.

6. On 1 May 2018 and in ABCMR Docket Number AR20160007595, the ABCMR determined that the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records of the applicant concerned.

7. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request to upgrade of her under other than honorable conditions (UOTHC) discharge to general, under honorable conditions. She contends PTSD and other mental health mitigates her discharge. 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 RA on 12 June 1997.
- DA Form 4187 (Personnel Action) shows she went absent without leave (AWOL) on 15 February 1999. Her duty status changed from AWOL to dropped from rolls (DFR) on 17 March 1999. She surrendered to military authorities at Fort Bragg, NC on 7 April 1999 and was transferred to the Personnel Control Facility at Fort Knox, KY.
- Court-martial charges were preferred against the applicant on 19 April 1999. Her DD Form 458 (Charge Sheet) shows she was charged with one specification of being AWOL from her organization, 64th Replacement Company, Germany, on or about 16 February 1999 to on or about 7 April 1999.
- Applicant was discharged on 19 June 2000. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and her service was characterized as under other than honorable conditions.

b. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, and documents from her service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration. The applicant states, she believes her discharge should be changed to general, under honorable conditions due to the unstable circumstances she was facing at the time. She served on active duty with no other issues. She completed basic training and advanced individual training with no proven issues. She went home on leave and her life took a turn for the worse. She thought all this time her discharge was general, under honorable conditions, and is just asking that it be changed. On her application she marked post-traumatic stress disorder (PTSD)

and other mental health condition were issues/conditions related to her request for an upgrade.

c. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from her time of service. Applicant is not service connected and there are no VA electronic medical records available for review. No medical documentation post-military service substantiating her assertion of PTSD or other mental health condition were submitted for review. e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant has been diagnosed with PTSD or any other behavioral health condition. However, per Liberal Consideration, the applicant's self-assertion of PTSD merits consideration by the board." Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends PTSD and other mental health condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant states having a condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH conditions. There is no evidence of any in-service BH diagnoses, and the VA has not diagnosed the applicant with any BH conditions. And while the applicant self-asserted PTSD and other mental health condition, the applicant did not provide medical documentation substantiating any diagnoses. In addition, on 29 August 2023, the Director, Case Management Division, sent a letter to the applicant requesting she provide a copy of the Veterans Administration medical documents or any other medical documents that support her contention of PTSD and other mental health condition, however, she did not respond.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined 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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, she consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry and under other than honorable conditions 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 insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20160007595 on 1 May 2018.

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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. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who had committed an offense or offenses, for which the authorized punishment included a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. Commanders will ensure that a Soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences. This paragraph also provides that the Soldier's written request will also include an acknowledgement that the Soldier understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a punitive discharge. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 than honorable characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions and when authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.

2. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

4. Section 1556 of Title 10, United States 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. 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.

5. 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 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.

//NOTHING FOLLOWS//