

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006587

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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)
  - Personal statement
  - Behavioral health visit summary

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, in effect, she desires an upgrade of her discharge due to the fact she suffers from Post-Traumatic Stress Disorder (PTSD) and Military Sexual Trauma (MST) as a result of being sexually assaulted during her period of service. Due to her MST and her fear of backlash, she did not request an upgrade sooner. After talking with a psychiatrist, she now has the courage to do so.
3. The applicant enlisted in the Regular Army on 10 August 1982. Upon completion of initial entry training, she was assigned to a unit located in Bamberg, Germany. She was advanced to private/E-2 on 10 February 1983.
4. A DA Form 4700 (Medical Record – Supplemental Medical Data), dated 2 August 1983, shows the applicant failed to meet Army body fat standards as established in Army Regulation 600-9 (The Army Weight Control Program) for a person of her age and gender. She required a total weight loss of 11 pounds to comply with Army standards. It

was recommended that she lose 4 pounds per month. She was referred for nutritional diet and exercise counseling, which she received on 2 August 1983.

5. The applicant was advanced to private first class/E-3 on 1 September 1983.
6. A DA Form 4700, dated 6 March 1984, shows the applicant had actually gained weight while participating in the Army Weight Control Program. She required a total weight loss of 13 pounds to comply with Army standards. It was recommended that she lose 4 pounds per month. She was examined by a physician who determined her body fat percentage and weight at the time exceeded the established standards and that the cause of her overweight condition was not due to a pathological disorder.
7. The applicant underwent a pre-separation medical examination on 4 April 1984. She self-reported that she was in good health. It was determined that she was qualified for separation proceedings.
8. On 16 April 1984, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 (Separation for Unsatisfactory Performance). The reason for this action was the applicant's failure to meet body fat standards after application of the procedures in Army Regulation 600-9. The applicant's commander stated she had become a detrimental and disturbing figure within her unit and the Army. The commander advised the applicant that her separation could result in a discharge characterized as honorable or under honorable conditions as warranted by her military record. He also advised her of her rights pertaining to this separation action. The applicant acknowledged receipt of the notification the same day.
9. On 2 May 1984, the separation authority approved the recommended discharge and directed the issuance of an under honorable conditions (general) discharge certificate.
10. Orders and the applicant's DD Form 214 show she was discharged on 11 May 1984, under the provisions of Army Regulation 635-200, paragraph 13-2a(2), due to failure to meet body fat standards with a Separation Program Designator code of "JFV" and a Reentry Eligibility code of "3." Her service was characterized as under honorable conditions. She was credited with completion of 1 year, 9 months, and 2 days of net active service this period and had no lost time.
11. On 2 August 2023, a staff member of the Case Management Division, Army Review Boards Agency (ARBA) requested a copy of the redacted Criminal Investigation Division (CID) and Military Police Reports of Investigation pertaining to the applicant being sexually assaulted during her period of service. On 8 August 2023, the CID responded that a search of the Army criminal file indexes revealed no sexual assault records pertaining to the applicant.

12. The applicant provides a VA Form 21-4138 in support of her disability claim on 16 August 2023. This document and the enclosures are available in their entirety for the Board's consideration. Additionally, she provides:

a. A personal statement wherein she provided the details of when she was sexually assaulted by a Soldier in November 1983.

b. A summary of treatment she received from a behavioral health facility which shows, in part, that she was diagnosed with:

- Generalized anxiety disorder
- Major depressive disorder, recurrent episode, moderate
- PTSD

13. During the applicant's era of service, and per the provisions of Chapter 13, Army Regulation 635-200, commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur
- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

14. 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.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge to an honorable discharge. She contends she experienced military sexual trauma (MST) and PTSD that mitigates 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 10 August 1982; 2) Evidence shows the applicant failed to meet Army body fat standards on 02 August 1983, and she was required to lose 11lbs to comply with Army standards; 3) The applicant was advanced to private first class/E-3 on 1 September 1983; 4) On 6 March 1984, the applicant gained weight while participating in the Army Weight Control Program; 5) The applicant underwent a pre-separation medical examination on 4 April 1984. It was determined that she was qualified for separation proceedings; 6) The applicant was discharged on 11 May 1984, under the provisions of Army Regulation 635-200, paragraph 13-2a(2), due to failure to meet body fat standards. Her service was characterized as under honorable conditions.

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

d. The applicant reported she experienced MST and resultant PTSD, which were contributing and mitigating factors in the circumstances that resulted in her separation. The applicant reported experiencing MST (November 1983) after her initial counseling for failing to meet height/weight standards. A search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no sexual assault records pertaining to the applicant. There is insufficient evidence the applicant reported or was diagnosed any mental health condition while on active service.

e. A review of JLV was void of any behavioral health documentation related to the applicant, and she does not receive any service-connected disability. The applicant did provide civilian documentation from South Central Behavioral Health in Laurel, MS (last dated 22 November 2019). The applicant has been diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder, and PTSD. There was no additional information provided on the history of the applicant's mental health conditions or if they were related to her active service.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant has been diagnosed with a mental health condition related to her report of MST or active service. However, she reports experiencing MST during her active. In accordance with the liberal consideration memo, the applicant's contention of MST alone is sufficient to be considered by the board in reaching its final determination.

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 PTSD related to MST

that contributed to her discharge from the military for failing height/weight standards. The applicant did provide evidence she was diagnosed with PTSD in 2019 by a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she was experiencing PTSD related to MST that contributed to her discharge from the military for failing height/weight standards.

(3) Does the condition experience actually excuse or mitigate the discharge? Partial, there is insufficient evidence beyond self-report the applicant was experiencing symptoms of PTSD while on active service. The applicant reported experiencing MST after her initial counseling for failing to meet height/weight standards. However, the applicant could have faced increased difficulty accomplishing the goal of meeting the standard, if experiencing the negative emotion associated with MST, which would be a mitigating event. Also, in accordance with the liberal consideration memo, the applicant's contention of MST alone is sufficient to be considered by the board in reaching its final determination.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted that the period of the applicant's service predates current DoD guidance and perspective on MST and PTSD and found it plausible that there would not necessarily been a request of investigation or a police report. The Board considered the applicant's VA post-service determination of PTSD and other behavioral health conditions. After due consideration of the applicant's request and in accordance with the liberal consideration memo, the applicant's contention of MST alone is sufficient to be considered by the board in reaching its final determination and a recommendation for relief is warranted.

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 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 to show in block 24 (Character of Service) as Honorable.

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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. 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. 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. The ABCMR may, in its discretion, hold a hearing.

4. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Under chapter 13:

(1) Commanders could initiate separation action against Soldiers when, in the commanders' judgment:

- they would not develop sufficiently to participate in satisfactorily in training and/or become satisfactory Soldiers;
- the seriousness of the circumstances was such that the Soldier's retention would have an adverse impact on the military discipline, good order, and morale; and
- it was likely the Soldier would continue to be disruptive influences in present and future assignments
- it was likely that the circumstances forming the basis for initiation of separation procedures would continue or recur

- the ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership was unlikely

(2) Prior to the initiation of separation action, the regulation stipulated that commanders ensure Soldiers had received adequate counseling and rehabilitation. The regulation pointed out that military service was a calling different from any civilian occupation, and as such, commanders were not to consider separation solely due to unsatisfactory performance unless the leadership had made efforts to rehabilitate the Soldiers.

(3) The regulation permitted separation authorities to furnish Soldiers separated under this provision with either an honorable or a general discharge under honorable conditions.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 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; 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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//