

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230006693

APPLICANT REQUESTS: in effect, correction of her military record by:

- restoration of her rank/grade to sergeant (SGT)/E-5
- changing the narrative reason for separation to "For the convenience of the government"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- Orders 17-331-00028 issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC on 27 November 2017
- Orders 22-147-00022 issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC on 27 May 2022
- Army Discharge Review Board (ADRB) correspondence for Docket Number AR20190008867
- Department of Veterans Affairs (VA) Atlanta Regional Loan Center, Decatur, GA letter, dated 23 May 2023
- Two screenshots from the VA Disability Rating website

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 was separated from the military without her knowledge, and without being afforded an opportunity to appear before an Administrative Separation Board (ASB) prior to her discharge from the U.S. Army Reserve (USAR).

a. The ADRB reviewed her case and found this to be true. As a result, the ADRB upgraded her service characterization from "Under Other than Honorable Conditions (UOTHC) to "Honorable" and restored her rank to SGT/E-5.

b. Due to being discharged, she was not able to fulfill her 6-year obligation as a reservist. She would like to receive her certificate of eligibility for the VA Home Loan Program. In order for this to happen her reason for discharge should state " For the convenience of the government."

c. She is currently rated as 80 percent disabled due to post-traumatic stress disorder (PTSD) stemming from Military Sexual Trauma (MST) and cannot return to service. She is requesting correction of her discharge so she can be eligible to receive the benefits she would have received if she was not erroneously relieved of her reservist status.

d. The VA denied her benefits because she did not fulfill the requirement for length of service for a discharged Reserve/National Guard (R/NG) Veteran which must be at least 6 creditable years. To reverse their decision, they need one of the following:

(1) Evidence of 6 qualifying years in the R/NG. Documentation for Reservists may include a Retirement Points Statement. Documentation for National Guard may include a NGB 22 and NGB 23.

(2) Evidence from the R/NG for a Service Connected Disability Discharge before the completion of 6 qualifying years.

(3) Evidence of a call to Active Duty under Title 10 for at least 90 days during a period of war, which was not for training or special work may be provided. A copy of a DD Form 214 (Certificate of Release or Discharge from Active Duty) with the reason for discharge and character of service is needed.

e. She was robbed from completing her 6-year commitment in the R/NG due to being discharged from the military without her knowledge. She was still completing drill status and physical training. The evidence was assessed by the ADRB and favorably considered. Due to MST, PTSD, and evidence that she was indeed discharged from the military without her knowledge; her rank was restored, and her discharge was upgraded to honorable. There is no paragraph stating the reason for her discharge and she needs that to qualify for a VA home loan.

4. Following a period of honorable service in the Army National Guard (ARNG) the applicant enlisted in the USAR for a period of 7 years on 6 September 2013. She held the rank/pay grade of specialist/E-4 at the time.

5. She successfully completed the Warrior Leader Course on 6 May 2014.
6. Her DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (SGT)) rendered for the period from 1 September 2015 through 30 August 2016 shows she was promoted to SGT effective 1 September 2014. She received favorable remarks and ratings from both her rater and her senior rater for the rating period. In Part Vb, the senior rater stated, "Soldier is a contractor working overseas, evaluation for potential difficult to evaluate. The minimal interaction that was with the Soldier, the Soldier was motivated and took care of task immediately."
7. The applicant's record is void of any derogatory information and the specific facts and circumstances that led to her discharge. However, Orders 17-331-00028 issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC on 27 November 2017 show:
 - a. The applicant was reduced from SGT/E-5 to private/E-1 effective 27 November 2017 under the provisions of Army Regulation 600-8-19 (Enlisted Promotions and Reductions), paragraph 10-15 (Approved for discharge from the service UOTHC).
 - b. The applicant was discharged from the USAR effective 4 December 2017 under the provisions of Army Regulation 135-178 (ARNG and Reserve – Enlisted Administrative Separations) with a discharge UOTHC. No specific chapter, paragraph, or narrative reason was cited.
8. On 13 May 2019, the applicant petitioned the ADRB for an upgrade of her service characterization and restoration of her rank/pay grade to SGT/E-5 for the aforementioned reasons. The ADRB Record of Proceedings shows, by records review conducted on 3 November 2021, the ADRB determined the characterization of service was inequitable based upon the applicant's length and prior periods of honorable service and the circumstances surrounding her discharge (i.e., Generalized Anxiety Disorder with notation of in-service trauma related to maltreatment). Accordingly, the ADRB voted unanimously to grant relief by upgrading her characterization of service to Honorable. The ADRB also determined the applicant's request for restoration of her rank was not within their purview and referred her to the ABCMR to seek relief. The ADRB informed the applicant of these decisions on 19 January 2022.
9. Orders 22-147-00022, issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC on 27 May 2022 amended Orders 17-331-00028 issued by Headquarters, 81st Regional Support Command, Fort Jackson, SC on 27 November 2017 by changing the type of discharge to Honorable and the additional instructions to show the correction was in accordance with Army Review Boards Agency (ARBA) Directive AR20190008867, dated 19 January 2022.

10. On 6 July 2023, in response to a written request, a member of the Army Criminal Investigation Division, Quantico, VA, informed an ARBA staff member that a search of the Army criminal file indexes revealed no MST records pertaining to the applicant.

11. 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.

12. MEDICAL REVIEW:

a. Request: The applicant is requesting correction of her military record including restoration of her rank/grade to sergeant (SGT)/E-5 and a change in the narrative reason for separation to "For the convenience of the government".

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- Following a period of honorable service in the Army National Guard (ARNG) the applicant enlisted in the USAR for a period of 7 years on 6 September 2013. She held the rank/pay grade of specialist/E-4 at the time.
- She successfully completed the Warrior Leader Course on 6 May 2014.
- Applicant was discharged from the USAR effective 4 December 2017 under the provisions of Army Regulation 135-178 (ARNG and Reserve – Enlisted Administrative Separations) with a discharge UOTHC. No specific chapter, paragraph, or narrative reason was cited.
- On 13 May 2019, the applicant petitioned the ADRB for an upgrade of her service characterization and restoration of her rank/pay grade to SGT/E-5 for the aforementioned reasons. The ADRB Record of Proceedings shows, by records review conducted on 3 November 2021, the ADRB determined the characterization of service was inequitable based upon the applicant's length and prior periods of honorable service and the circumstances surrounding her discharge (i.e., Generalized Anxiety Disorder with notation of in-service trauma related to maltreatment). Accordingly, the ADRB voted unanimously to grant relief by upgrading her characterization of service to Honorable. The ADRB also determined the applicant's request for restoration of her rank was not within their purview and referred her to the ABCMR to seek relief. The ADRB informed the applicant of these decisions on 19 January 2022.

c. 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 293, ABCMR Record of Proceedings (ROP), and Army Discharge Review Board (ADRB) correspondence for Docket Number AR20190008867. The VA electronic medical record

and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, in effect, she was separated from the military without her knowledge, and without being afforded an opportunity to appear before an Administrative Separation Board (ASB) prior to her discharge from the U.S. Army Reserve (USAR). The ADRB reviewed her case and found this to be true. As a result, the ADRB upgraded her service characterization from "Under Other than Honorable Conditions (UOTHC) to "Honorable" and restored her rank to SGT/E-5. However, due to being discharged, she was not able to fulfil her 6-year obligation as a reservist. She would like to receive her certificate of eligibility for the VA Home Loan Program. In order for this to happen her reason for discharge should state " For the convenience of the government."

e. The VA electronic record indicates the applicant is currently 80% service connected, including 70% for PTSD. The applicant has been receiving behavioral health services via the VA since August 2021.

f. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that in the absence of a separation packet with the specific facts and circumstances that led to the applicant's discharge, this advisor is unable to opine regarding the restoration of the applicant's rank of SGT/E-5 or the change in narrative reason for separation.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that consistent with the ADRB's recommendation, the applicant's rank of SGT/E-5 should be restored, and the narrative reason for separation should be updated to "For the convenience of the government" consistent with her prior upgrade.

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant served in the USAR from 6 September 2013 to 4 December 2017, attaining the rank of SGT/E-5. Her separation is packet is not available for review, which means the specific narrative reason for her separation is unknown. Orders 17-331-00028 issued on 27 November 2017 ordered her discharge from the USAR under the provisions of AR 135-178 with a characterization of service of under other than honorable conditions effective 4 December 2017. The ADRB considered her case and voted to change the characterization of service to honorable because the applicant had a condition which mitigated at least part of the applicant's discharge. Thus, the prior characterization is no longer appropriate.

b. As a result of the ADRB decision, on 27 May 2022, the applicant was issued Orders 22-147-00022 to amend her characterization of service from under other than honorable conditions to honorable. The amendment orders did not clearly restore her rank. As such, the Board determined her rank/grade should be restored to SGT/E-5. As for the reason for separation, Reserve discharge orders cite the governing regulation (AR 135-178 for enlisted and AR 135-175 for officers). The discharge order does not specify a particular chapter or paragraph. Additionally, the applicant's requested reason for separation (convenience of the government, chapter 6 of AR 135-178)) applies in cases of dependency or hardship, pregnancy, surviving sons or daughters, parenthood, not medically qualified under procurement medical fitness standards, and other designated physical or mental conditions, none of which applies in the applicant's case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by restoring her rank/grade of SGT/E-5 at the time of discharge from the USAR.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.2.

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 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, 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. 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. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.
 - a. Paragraph 2-9a provides that an honorable characterization of service 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 characterization would be clearly inappropriate.
 - b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.
 - c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.
5. Army Regulation 600-8-19 prescribes policies and procedures governing promotions and reductions of Army enlisted personnel. This regulation includes policy statements,

operating tasks, rules in support of operating tasks, and sequential steps of each operating task. This regulation applies to the Regular Army, The Army National Guard/Army National Guard of the United States, and the USAR, unless otherwise stated. Paragraph 10-15 pertains to Soldiers who are approved for discharge from the service UOTHC:

a. When the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted rank. Further board action is not required for this reduction.

b. If discharge is approved under other than honorable conditions, but is suspended, the Soldier will not be reduced under this paragraph.

6. 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 UOTHC 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.

7. 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.

8. 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//