

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230006924

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions her character of service to honorable
- 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)
- [REDACTED] letter of support
- [REDACTED] letter of support
- [REDACTED] letter of support
- medical administrative records (520 pages)

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 she was sexually assaulted during her time in service. She was also physically and mentally abused. She was diagnosed with post-traumatic stress disorder (PTSD), agoraphobia, depression, anxiety, and migraines. She takes medication and attends therapy due to this trauma. She had to give up her right to her child because the unit refused to help her. She was forced to leave the barracks without additional basic housing allowance (BHA) and was unable to support keeping a child. Everything has caused her severe emotional issues and has affected all of her relationships. The application shows her request is related to PTSD, other mental health, and sexual assault/harassment.

3. The applicant enlisted in the Regular Army on 29 October 2003. She completed her required training and was assigned to Fort Lewis, WA effective 5 January 2005.
4. A DA Form 4187 (Personnel Action) shows the applicant's duty status changed from leave to absent without leave (AWOL) effective 22 February 2005. She returned to duty effective 2 March 2005.
5. The applicant was counseled on 3 March 2005 for being AWOL. Her leave started on 8 February 2005 through 15 February 2005, from which she failed to return. She contacted her chain of command for an extension, which was denied. She was instructed to return to her unit for further instruction or assistance. She was advised if her substandard conduct continued, action would be initiated to separate her from the Army. The applicant acknowledged the counseling and rights.
6. On 31 March 2005, the applicant accepted non-judicial punishment (NJP) for being AWOL.
7. The applicant submitted the following undated summarized statement:
 - a. She started her leave on 8 February through 15 February and went to San Antonio, TX. On 10 February at about 0300 hours, she woke up in pain with light bleeding. She called Brook Army Medical Center who advise this was normal but to come in if it got worse. By 0900 her symptoms had gotten worse, she called her fiancé to take her to the emergency room. She arrived around 1200 but was not seen until 1500 by the nurse; she continued to wait until 1830 when the doctor saw her. The examination and tests revealed she was having a miscarriage. She was instructed to follow up with obstetrics; she did on 15 February. She was placed on convalescent leave until 28 February.
 - b. She contacted her unit to request convalescent leave or to extend her leave. Her request was denied and she was instructed to return to the unit. She did not want to fly only a few days after the miscarriage. Conversations with her unit made her feel they did not understand or care about her.
 - c. She tried to get a plane ticket on 25 February but did not have money on her credit card. She flew back to Seattle on 2 March, arriving at 1925 hours, and reported to her unit.
8. The applicant was reported AWOL from 11 August 2005 to 12 August 2005.
9. On 30 August 2005, the applicant was counseled for failing to be at her appointed place of duty for the 0900 formation on 26 August 2005.

10. On 31 August 2005, the applicant was counseled because on 29 August 2005 she left for lunch and did not return to duty. She failed to report to the 0900 formation on 30 August 2005. Per a conversation at 0900 on 31 August 2005, she was instructed to report to duty after a 0930 appointment, which she failed to do.

11. The applicant was reported AWOL from 6 October 2005 to 12 October 2005.

12. On 25 October 2005, the applicant was counseled to inform her of the change of status from Chapter 8 to Chapter 14 due to patterns of misconduct. A series of events have led to the change of the Chapter 8 to Chapter 14. She was AWOL twice and failed to report three times. She was also having financial problems which has resulted in the chain of command being notified of her indebtedness.

13. The applicant accepted NJP on 13 February 2006 for:

- failure to go to her appointed place of duty on at 0630 hours on 9 August 2005
- failure to go to her appointed place of duty on at 1630 hours on 9 August 2005
- failure to go to her appointed place of duty on at 0630 hours on 10 August 2005
- AWOL from 11 August 2005 to 12 August 2005
- failure to go to her appointed place of duty on at 0900 hours on 6 October 2005
- AWOL from 6 October 2005 to 12 October 2005

14. The applicant was reported AWOL effective 3 May 2006. She was dropped from the rolls as a deserter effective 3 June 2006.

15. Charges were preferred against the applicant for AWOL and desertion. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces) was also issued.

16. A DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civilian authorities on 28 November 2006. She was reported present for duty effective 8 December 2006.

17. On 11 December 2006, charges were preferred against the applicant for AWOL and desertion from 5 June 2006 until she was apprehended on 28 November 2006.

18. A Pretrial Agreement, dated 11 December 2006, shows after consulting with her defense counsel, the applicant plead guilty to one change of desertion and accept trial by summary court-martial. The offer was accepted 13 December 2006. The applicant was sentenced to be reduced to Private/E-1, forfeit \$849.00 pay and to be confined for 30 days. She was released from confinement on 25 December 2006.

19. On 27 December 2006, the applicant underwent a mental status evaluation because of misconduct. Her DA form 3822-R (Report of Mental Status Evaluation) shows:

- normal behavior
- fully alert
- fully oriented
- unremarkable mood
- clear thinking process
- normal thought content
- good memory
- has the mental capacity to understand and participate in the proceedings and was mentally responsible
- meets retention requirements
- is cleared for any administrative actions deemed appropriate by command

20. The applicant underwent a medical examination on 28 December 2006.

a. Her DD Form 2708-1 (Report of Medical History) shows she reported the following history:

- current medications: prenatal vitamins
- foot problems (bone spurs) since 1993
- asthma since 1996
- migraines since 1998
- appendectomy, April 2004
- lower back pain since 2005
- miscarriage, February 2005
- pregnancy, delivered November 2005
- lumpectomy, May 2006

b. Her DD Form 2808 (Report of Medical Examination) shows:

- a normal prenatal examination on 14 December 2006
- on temporary profile for pregnancy
- unacceptable dental defects/disease - follow up with dental for root canal
- cleared for administrative action

21. On 4 January 2007, the applicant's commanding officer recommended she be separated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), Chapter 14, Section III, Paragraph 14-12c for commission of a serious offense. Specifically, for:

- AWOL from 22 February 2005 to 2 March 2005
- AWOL from 11 August 2005 to 12 August 2005
- AWOL from 6 October 2005 to 12 October 2005
- desertion with the intent to remain away permanently between 5 June 2006 until apprehended on 28 November 2006

22. The applicant's chain of command reviewed the recommendation. He concurred and recommended a character of service of other than honorable.

23. The applicant was notified on 4 January 2007 of action to separate her. She was advised of her right to consult with counsel, obtain copies of documents used in the proceedings, to request a hearing before an administrative separation board, to submit statements on her own behalf. She acknowledged receipt the same day.

24. A Staff Judge Advocate reviewed the applicant's separation package and on 8 February 2007, concurred with the recommendation for separation. Her separation was approved on 9 February 2007.

25. The applicant was discharged on 27 February 2007 under the provisions of AR 635-200, paragraph 14-12c for misconduct, serious offense with a character of service of under other than honorable conditions. She received a separation code of JKQ and a reentry code of 3. Additionally, she had lost time from: 2 February 2005 - 2 March 2005; 11 August 2005 - 12 August 2005; 6 October 2005 - 12 October 2005; 3 May 2005 - 8 December 2006; and 14 December 2006 - 25 December 2006.

26. The applicant provided three letters of support.

a. ■ states she has been friends with the applicant for 3 years. The applicant is a wonderful, selfless, inspirational woman determined to do well and never gives up. She runs a home and goes to school full time.

b. ■ states she has known the applicant for 8 years. The applicant is a kind, compassionate, honest, trustworthy, friendly person.

c. ■ states she has known the applicant since 2005 when they were stationed together. She remembers the applicant being scared because she was physically and mentally abused by her boyfriend. Their First Sergeant did not take ailments seriously. The applicant did not want to discuss her issues with him because he wouldn't take her seriously. When a new First Sergeant reported in, the applicant did not want to talk to him either because he was handsy. ■ states she was instructed by the First Sergeant to falsify documents related to the applicant's AWOL and desertion. She knew of the applicant's whereabouts but chose not to contact her because of the applicant's violent

boyfriend. It is her opinion the applicant would not have been AWOL if she had been comfortable with leadership.

27. On 10 August 2023, the ABCMR requested the applicant provide medical records to support her claim of diagnosis for PTSD and other mental health issues. She responded with 520 pages of administrative medical records.

28. The ABCMR also requested the Army Criminal Investigation Command provide redacted reports related to the applicant's sexual assault. A response that no such reports exist related to the applicant on 14 August 2023.

29. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

30. MEDICAL REVIEW:

a. The applicant requests an upgrade of her under other than honorable conditions (UOTHC) discharge to honorable. She contends her misconduct was related to PTSD, MST, and Other Mental Health Issues.

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 into the Regular Army on 29 October 2003; 2) A DA Form 4187 (Personnel Action) shows the applicant's duty status changed from leave to absent without leave (AWOL) effective 22 February 2005. On 31 March she accepted NJP under Article 15 for being AWOL from 22 February to 2 March 2005; 3) On 13 February 2006 the applicant accepted NJP for FTR on 9 and 10 August 2005, being AWOL 11 to 12 August 2005, FTR on 6 October 2005, and being AWOL from 6 October to 12 October 2005; 4) The applicant was reported AWOL effective 3 May 2006. She was dropped from the rolls as a deserter effective 3 June 2006; 5) A DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civilian authorities on 28 November 2006. She was reported present for duty effective 8 December 2006; 6) On 11 December 2006, charges were preferred against the applicant for AWOL and desertion from 5 June 2006 until she was apprehended on 28 November 2006; 7) On 4 January 2007, the applicant's commanding officer recommended she be separated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), Chapter 14, Section III, Paragraph 14-12c for commission of a serious offense; 8) A Staff Judge Advocate reviewed the applicant's separation package and on 8 February 2007, concurred with the recommendation for separation. Her separation was approved on 9 February 2007. The applicant was discharged on 27 February 2007 under the provisions of AR 635-200, paragraph 14-12c for misconduct.

c. The military electronic medical record, AHLTA, VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant underwent a Chapter 14 MSE on 27 December 2006 and was found not to have a psychiatric diagnosis on either Axis I or Axis II, was mentally responsible for her behavior, was able to distinguish between right and wrong, possessed sufficient mental capacity to participate in administrative and judicial proceedings, and cleared for any administrative actions deemed appropriate by command. On 18 December 2006 the applicant underwent a Report of Medical Examination and was found medically qualified for administrative separation. Included in the applicant's casefile was a U.S. Army CID Report, dated 14 August 2023, that shows a search of the CID Army Criminal File Index revealed no sexual assault records pertaining to the applicant. No other military BH-related records were provided for review. A review of JLV was void of any BH treatment records for the applicant and she does not have a service-connected disability. The applicant provided civilian BH documentation from Elite DNA Therapy Services, LLC showing she received treatment from 20 July 2021 to 14 August 2023. The records are sparse of specific clinic details but shows the applicant was seen on 20 July 2021 for an initial BH visit and reported anxiety and inability to leave her home with onset in 2011. She reported the precipitating factor for seeking treatment was secondary to feeling anxious at her daughter's 5th grade graduation ceremony. It was noted the applicant current symptoms were related to anxiety about leaving the house, a history of trauma, depression, and obsession about housework and item placement. She was diagnosed with MDD recurrent and GAD and referred for outpatient treatment via therapy and medication management. Encounter note dated 29 June 2022 shows the applicant reported a diagnostic history of Agoraphobia, Severe OCD, and GAD. She further self-reported a history of traumatic events that began during childhood and while serving in the military. Records show the applicant reported a history of physical and emotional abuse by her mother and biological father until age 19, physical and sexual abuse from her son's biological father who would force her to have sex, and rape by a friend at age 19. Encounter note date 30 June 2022 shows she also reported a history of rape in 2005, which coincides with her time in service; records reflect a diagnosis of PTSD related to trauma that occurred prior to and during military service. Encounter note dated 31 August 2022 shows the provider noted the applicant shared more about "trauma and time in the military". Records show the applicant engaged in outpatient treatment for PTSD, GAD, MDD, and OCD through August 2023 with good results.

d. The applicant requests upgrade of her under other than honorable conditions (UOTHC) discharge to honorable. She contends her misconduct was related to PTSD, MST, and Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records show the applicant diagnosed with MDD recurrent, GAD, OCD, and PTSD reportedly related to childhood physical abuse, adult physical and sexual abuse by her son's father, and being raped in 2005 - which coincides with her time in service. Although the available records were sparse on details related to the trauma and lacked detail regarding criteria reported to be diagnostic criteria for PTSD, given the provider was

independently licensed to practice, this advisor will accept the diagnosis was properly rendered, and apply liberal guidance. As there is a relationship between PTSD and avoidance there is a nexus between the applicant multiple instances of AWOL and FTR such that the misconduct is mitigated by the disorder. Additionally, if taken as fact the applicant was raped in 2005, this would constitute military sexual trauma and should warrant consideration for HD/SA.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during her time in service that mitigated her misconduct.

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 is diagnosed with PTSD/MST, MDD, and GAD

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records show the applicant diagnosed with MDD recurrent, GAD, OCD, and PTSD reportedly related to childhood physical abuse, adult physical and sexual abuse by her son's father, and being raped in 2005 - which coincides with her time in service. Although the available records were sparse on details related to the trauma and lacked detail regarding criteria reported to be diagnostic criteria for PTSD, given the provider was independently licensed to practice, this advisor will accept the diagnosis was properly rendered, and apply liberal guidance. As there is a relationship between PTSD and avoidance there is a nexus between the applicant multiple instances of AWOL and FTR such that the misconduct is mitigated by the disorder. Additionally, if taken as fact the applicant was raped in 2005, this would constitute military sexual trauma and should warrant consideration for HD/SA.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to deny relief based on the applicant's misconduct of numerous AWOL and desertion. However, upon review of the applicant's petition, available military records and medical review, the Board majority concurred with the advising official finding sufficient evidence that the applicant had an experience or condition during her time in service that mitigated her misconduct. The opine noted, there is a relationship between PTSD and avoidance there is a nexus between the applicant multiple instances of AWOL and FTR such that the misconduct is mitigated by the disorder.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct to weigh a clemency determination. The Board noted the applicant's character letters of support attesting to her integrity, trustworthiness and her character since her discharge. The Board agreed to grant partial clemency in the form of an under honorable conditions (general) discharge, a separation code of JFF and her narrative reason as Secretarial Authority.

3. 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.

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:

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 re-issuing the applicant a DD Form 214 for the period ending 27 February 2007 to show in

- item 24 (Character of Service): Under Honorable Conditions (general)
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason): Secretarial Authority

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 upgrade of the applicant's under other than honorable conditions character of service to honorable.

3/4/2024

X Tamara Sorrell

CHAIRPERSON

Signed by: SORRELL.TAMARA.LATRICE.1095521920

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 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. AR 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-7a. 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 characterization would be clearly inappropriate.

b. Paragraph 3-7b.(1). A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 14-12c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense.

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 (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 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 grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

4. Section 1556 of Title 10, USC, 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 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//