

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230007168

APPLICANT REQUESTS: Her under other than honorable condition (UOTHC) discharge be upgraded to under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:DD

- Form 149 (Application for Correction of Military Record)
- Private Mental Health Assessment

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 March of 2005 she was raped at Fort Hood, TX and afterwards she discovered she was pregnant. When she told the man who raped her she was pregnant, he threatened he would kill her if she did not get an abortion or if she ever told anyone. She was honestly scared for her life and she left and never came back. She has suffered from severe PTSD ever since. Even though she loves her daughter, seeing her every day is just a constant reminder of what happened to her. After undergoing therapy, she understands what she has is treatable. Her undiagnosed PTSD coupled with literal fear for her life has caused her to deviate from her normal behavioral pattern.
3. On the applicant's DD Form 149, she indicates post-traumatic stress disorder (PTSD) and military sexual trauma as contributing and mitigating factors in the circumstances that resulted in her separation.
4. A review of the applicant's service record shows she enlisted in the Regular Army on 30 March 2004 for 4 years. She completed training and was awarded the military occupational specialty 92Y (Unit Supply Specialist). The highest grade she held was E-3.

5. The applicant received adverse counseling on eight occasions between 16 May 2005 and 13 October 2005 for various infractions including:

- Her pregnancy
- A no contact order
- Failure to Report (FTR)
- Insubordination
- Leaving formation early
- Being in the wrong uniform
- Not having the proper equipment
- Failure to comply with corrective training

6. On 15 June 2005, the applicant completed an Election for Pregnancy Option electing to be separated on or about 31 November 2005.

7. The applicant tested positive for marijuana on a random urinalysis on 31 August 2005

8. The applicant was placed in pretrial confinement as a flight risk on 12 October 2005.

a. The reasons cited were violations of the Uniform Code of Military Justice (UCMJ): four violations of Article 86 (FTR); three violations of Article 86 (AWOL); one violation of Article 89 (Disrespect Toward a Superior Commissioned Officer); and one violation of Article 112a (Wrongful Use of a Controlled Substance). Confinement was necessary, because it is foreseeable that the applicant would flee to avoid prosecution.

b. It was also foreseeable that she would engage in serious criminal misconduct, due to her association with PFC [REDACTED], who was currently AWOL, and had previously discharged an unregistered firearm while driving down I-90 in Killeen, and was involved in two separate assaults, one of which involved the applicant, and was a habitual drug user. In addition, less severe forms of restraint have been attempted in the past and proven to be inadequate.

c. The commander noted she had been AWOL from 19 August to 25 August, 29 August to 31 August, and from 8 September to 11 October totaling 41 days.

d. The available record does not contain other documentation of the applicant's periods of AWOL.

9. The applicant's complete separation processing documentation is not available in her service record.

10. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review in this case.

11. The applicant requested discharge in lieu of trial by Court-Martial and consulted with legal counsel on 27 October 2005 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to her.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, for the good of the service – in lieu of trial by court-martial. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She further acknowledged 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 Department of Veterans Affairs (VA), and she could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. She was advised she could submit any statements she desired in her own behalf; however, the applicant waived this right.

12. The separation authority approved the applicant's request for discharge on 28 October 2005, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that the applicant be reduced to the lowest enlisted grade and receive a UOTHC.

13. The applicant was discharged on 3 November 2005 in the grade of E-1. Her DD Form 214 shows she was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial and her service was characterized as UOTHC (Separation Code KFS, Reentry Code 4). She was credited with 1 year, 7 months, and 4 days of net active service with no lost time [although the record indicates 41 days of AWOL]. Her awards are listed as the National Defense Service Medal, Army Service Ribbon, and the Global War on Terrorism Service Medal.

14. The applicant provided a private mental health assessment dated 23 November 2022. She was diagnosed as suffering from Major Depressive Disorder (service related), Generalized Anxiety Disorder (service related), Social Anxiety Disorder (service related), and Hypertension. (Each diagnosis is secondary to military sexual

trauma and PTSD, but PTSD requires further evaluation). It was stated that although she has been prescribed antidepressants by her primary care provider, she also has a history of self-medicating with substances such as alcohol and cannabis.

15. A review of the records at the Department of the Army Criminal Investigation, Division Crime Records Center failed to reveal any records pertaining to the applicant.

16. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting her under other than honorable condition (UOTHC) discharge be upgraded to under honorable conditions. The applicant asserts PTSD and military sexual trauma (rape) are related to her request for upgrade.

b. 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 Regular Army on 30 March 2004.
- The applicant received adverse counseling on eight occasions between 16 May 2005 and 13 October 2005 for various infractions including:
  - Her pregnancy
  - A no contact order
  - Failure to Report (FTR)
  - Insubordination
  - Leaving formation early
  - Being in the wrong uniform
  - Not having the proper equipment
  - Failure to comply with corrective training
- On 15 June 2005, the applicant completed an Election for Pregnancy Option electing to be separated on or about 31 November 2005.
- The applicant tested positive for marijuana on a random urinalysis on 31 August 2005
- The applicant was placed in pretrial confinement as a flight risk on 12 October 2005.
- See record for full reasoning for this decision. Of note, the applicant was cited as having been AWOL from 19 August to 25 August, 29 August to 31 August, and from 8 September to 11 October totaling 41 days.

- The applicant's complete separation processing documentation is not available in her service record.
- Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review in this case.
- The applicant requested discharge in lieu of trial by Court-Martial and consulted with legal counsel on 27 October 2005.
- The applicant was discharged on 3 November 2005, under AR 635-200, Chapter 10, for the good of the service – in lieu of court martial, with an UOTHC characterization of service.

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 149, ABCMR Record of Proceedings (ROP), her DD Form 214, documents from her service record and separation, as well as a private mental health assessment. 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.

d. The applicant asserts PTSD and sexual assault (MST) as related to her request for upgrade. She asserts that she was raped in 2005 at FT hood and after she became pregnant. She told the man who raped her, and he threatened to kill her if she didn't get an abortion or if she told anyone. She noted she was scared for her life, left and never came back. She noted she has suffered from PTSD ever since. She asserts that she loves her daughter but seeing her every day is a constant reminder of what happened. She stated that after going through therapy, she knows what she has is treatable. She also asserts that her "undiagnosed PTSD coupled with literal fear of my life caused me to deviate from my normal behavior pattern." She asks that this be considered when making her request for upgrade.

e. The applicant's time in service predates consistent use of electronic health records (EHR) by the Army, though some records are available for review. The applicant does not have any mental health documentation in EHR from her time in service. The medical records available support that she was pregnant toward the end of her time in service (confirmed 21 July 2005). Her service record and supporting documents did not contain any additional service treatment records (STR). Her records also did not contain her separation physical. There is no current evidence of any mental health treatment nor diagnoses from her time in service. A request for information from CID did not produce any records or data about the applicants asserted MST.

f. Per the applicant's VA EHR, she is not service connected, holds no mental health diagnoses through the VA, and has had no engagement with healthcare through the VA. Though given the characterization of her discharge, she would not typically be

eligible for most VA benefits. Through review of JLV, this applicant did have “Community Health Summaries and Documents” available. Her records indicate she has been diagnosed with cannabis use disorder (noted in 2020), suicide attempt (2020), and major depressive disorder (MDD) – recurrent episode – severe (2020). The applicant also included a mental health assessment in her supporting documents, dated 23 November 2022. The assessment indicates the applicant has been diagnosed with MDD, generalized anxiety disorder (GAD), social anxiety disorder, and hypertension, with her provider indicating that each diagnoses appears secondary to her service and military sexual trauma. The record specifically indicates that a PTSD diagnosis needs further evaluation, though on PTSD screening (i.e., the PCL-5) the applicant significantly exceeded typical cutoffs, suggesting a diagnosis of PTSD. Her included medical records show she has been treated with medication and psychotherapy.

g. It is the opinion of the Agency Behavioral Health Advisor that there is minimal evidence, outside of self-report, to support the applicant had a mitigating condition or experience. However, the applicant asserts being raped, there is evidence of a pregnancy, and her unit detailed concern for her safety (due to an assault by another soldier she was dating, his being in significant military legal trouble, and he having a recent weapons charge). In addition, there is record of her being diagnosed with potentially mitigating conditions since her time in service, with the provider listing the conditions as service/MST related. Per Liberal Consideration guidelines, her contentions are sufficient to warrant the board’s consideration.

#### 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 asserted PTSD and MST.

(2) Did the condition exist, or experience occur during military service? Yes, the applicant asserts MST and undiagnosed PTSD occurred during her time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. This opine is given with caution considering her complete separation processing documents were not available. That said, enough administrative and counseling records were present detailing her misconduct, the reasoning for her separation, as well as her confinement. Hence, this opine is based on the available information.

h. Minimal data was provided from her time in service to substantiate her assertions, however per Liberal Consideration her contention is sufficient to warrant the board’s consideration. The applicant asserted MST during her time in the service. It is common for there to be no record or proof of these occurrences, though there is evidence of the pregnancy she asserts is secondary to her being raped. In addition, there is evidence

the applicant has been diagnosed and treated for mitigating conditions since her time in service (MDD, GAD, social anxiety disorder) all of which have been associated with her service and MST by her current assessing/treating provider. It is also evident that the applicant has been experiencing significant symptoms of PTSD though has not yet obtained the diagnosis. While the applicant is not service connected, her characterization of service would mean she is not eligible for most VA benefits. And the applicant may not be aware that service-related concerns (such as PTSD/MST) could potentially be treated at the VA if she gets them service connected, for treatment purposes only (which this advisor strongly recommends she works toward with the help of a VSO). Of note, avoidance behaviors (such as going AWOL and failure to reports), self-medication (such as use of marijuana), and irritability (as evidenced by difficulty with authority figures and/or showing disrespect toward a leader) are consistent with the natural history and sequelae of several mental health conditions and experiences, to include PTSD, depression, anxiety, and MST. Hence, the basis for separation is mitigated. Accordingly, an upgrade is recommended with a narrative reason for separation change to Secretarial Authority.

#### BOARD DISCUSSION:

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.

a. 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 an other than honorable conditions discharge. The Board found no error or injustice in her separation processing.

b. 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 minimal evidence of in-service mitigating factors to substantiate her assertions. The Board also agreed that the minimal mitigation did not outweigh the extensive misconduct for which she was discharged. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

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 for correction of the records of the individual concerned.

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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, 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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. ==== At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

4. 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 (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 a 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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.

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//