

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008126

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her under honorable conditions (general) characterization of service and, as new requests, the following:

- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to change her narrative reason for separation from “Misconduct” to “Disability, Permanent” and a change in the corresponding separation program number (SPN)
- modification of her record to credit her with 10 years of service
- modification of her record to reflect a transfer of her Montgomery GI Bill (MGIB) benefit to her son under the Post 9/11 Veterans Educational Assistance Act

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief (49 pages), undated
- Exhibit A, Psychiatric Evaluation, [REDACTED], dated 10 March 2023
- Exhibit B, Psychological Evaluation, [REDACTED], dated 31 October 2023
- Exhibit C, self-authored statement, dated 28 April 2023
- Exhibit D, Counseling Records, [REDACTED] Vet Center, dated 20 August 2019 and 14 February 2020
- Exhibit E through Exhibit H, four statements of support, dated 13 December 2022 to 4 March 2023
- Exhibit I, Resume, undated
- Exhibit J, College Transcripts, [REDACTED], dated Summer 2013 to Fall 2020
- Exhibit K, Official Military Personnel File (OMPF) (145 pages), dated 10 January 2000 to 21 August 2020
- Exhibit L, Service Treatment Records (86 pages), dated 11 January 2000 to 14-Nov-2001
- Exhibit M, Curriculum Vitae, [REDACTED], M.D., dated 10 April 2023
- Exhibit N, Curriculum Vitae, [REDACTED], PhD, dated 26 April 2022

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 Dockets Number AR20130013393 on 29 May 2013 and AR20190007329 on 15 November 2019.

2. The applicant states, in effect:

a. She enlisted in the military right after high school. She wanted a career, a sense of security, responsibility, and independence. She also thought it would help her continue her education. She was an outstanding Soldier and showed promise in her initial entry training. When she arrived at Fort Bliss, she was the only supply specialist in her unit. She took her job seriously and maintained a high standard.

b. Regarding her social life, she was the only Black Latina woman. She did not always feel like she fit in, but everyone got along. At one point, people start calling her "Fellatio" because it sounded like her last name. She does not recall anyone else getting a sexualized nickname. She acted like it did not bother her because she did not want problems. Everyone went out on weekends. It was common for people to dance together, which was sometimes sexually suggestive. There was often an expectation for the women to go home with the men. This made her uncomfortable. She did not dance much and made it clear she did not want to go home with anyone. She set boundaries and kept a tough expression.

c. There was a lot of fraternization. No one did anything about it. She heard that Captain (CPT) ■, her commanding officer, was sleeping with her friend. One evening, a specialist in her unit gave her a bottle of whiskey. She drank too much, went to her room, and passed out on her bed. When she woke up, she was with the Emergency Medical Technicians (EMTs). She was not wearing a bra or underwear and does not remember anything that happened. She heard she was with another person, ended up in his room, and passed out there. If anyone raped her, she would not have known. She was referred for alcohol abuse counseling. She only went to one session because it was an isolated incident.

d. She had a bad experience with the counselor, who was a white woman. No one seemed concerned about whether anything bad happened. She was not advised to get a rape kit. Nor did anyone follow up with the man she was with that night. She started getting into trouble after that incident. Things got worse after Sergeant (SGT) ■ arrived. He picked at her, belittled her, and screamed in her face. On one occasion, she was having trouble getting a sample for a unit drug test. He yelled at her aggressively and accused her of doing drugs. He treated her differently from others. He always put her on

command post (CP) duty and denied her requests for leave. He was white, and she wondered if it was not because she was an Afro-Latina woman.

e. Her mental health deteriorated. She was depressed and anxious. She started drinking to escape how she was feeling. She felt trapped and desperate. One weekend, she went to ██████████ to see her boyfriend without permission because she needed to get off base and receive emotional support. She received other disciplinary punishment for failing to show up for work at the supply room when she had scheduled supply staff meetings which she was required to attend, rather than going to the supply room. SGT ██████████ yelled at her, threatened to demote her, and physically removed the rank from her uniform.

f. She does not recall all the specifics of her misconduct. She feels like she had a target on her back. She still wanted to be in the Army and continued to take her duties seriously and take pride in her work. She requested a transfer, but CPT ██████████ said they needed her. He made it clear he would not do anything to help her. Her mental health got worse. She drank more, felt on-edge, could not relax, and was irritable and angry. She accepted a general discharge because she felt she had no choice. She deeply regrets that her service ended this way.

g. Right after leaving, she felt unmotivated. She experienced anxiety, anger, and irritability, and drank a lot. After having three different jobs, she went back to school. She had to pay for her schooling herself. She earned her bachelor's degree in 2016 and her master's in 2020. She is proud of her educational accomplishments and the work she does helping other people. She spends a lot of time with her family. She has been happily married for 17 years and has one son. She struggles with symptoms of post-traumatic stress disorder (PTSD), anxiety, and depression. She experiences anxiety when she works with men, and finances and student loans are a trigger for her.

h. She has made a lot of positive changes. She rarely drinks alcohol, attends talk therapy at the veteran center, has become more patient, and manages her anger better. It would mean a lot to her for the military to acknowledge the things she went through and the progress she has made.

### 3. Counsel states, in effect:

a. The applicant was a dedicated Soldier with overall "exceptional" job performance. She did her best to succeed, despite struggling with undiagnosed and untreated PTSD, due to sexual harassment, the fear of a potential sexual assault, and traumatic sex and race-based discriminatory treatment from SGT ██████████. Her commander did not support her, and she felt she had no choice but to except a general discharge.

b. She should receive liberal consideration due to her experience of military sexual trauma (MST) and the ensuing PTSD, which excuse, mitigate, and outweigh the misconduct which led to her discharge. Her candor, remorse, acceptance of responsibility, evidence of rehabilitation, and strength of character weigh in her favor. Due to changes in policy, she could reasonably expect a more favorable outcome if she were discharged today.

c. Additionally, if not for MST, she would have stayed in the Army and requested benefits for her child during her time in service. Her record should be modified to reflect ten years in service and include submission of a request for transfer of her educational benefits to her son.

4. The applicant enlisted in the Regular Army on 5 July 2000 for a 3-year period. Upon completion of initial entry training, she was awarded military occupational specialty 92Y (Unit Supply Specialist). The highest rank she attained was private/E-2.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 21 February 2002 for failure to go at the time prescribed to her appointed place of duty, being disrespectful in language towards a superior non-commissioned officer (NCO), and being derelict in the performance of her duties by failing to keep her weapon with her on or about 17 January 2002. Her punishment consisted of reduction to private/E-1, forfeiture of \$238.00 pay, 14 days of extra duty, 14 days of restriction, and an oral reprimand.

6. She was formally counseled on five occasions between 2 May and 13 May 2002. Areas of emphasis covered in the counseling include, but are not limited to:

- violation of the brigade pass and leave policy
- failure to report on two occasions
- failure to obey a lawful order
- failure to use battery sick call procedures

7. A DD Form 2807-1 (Report of Medical History), dated 23 May 2002, and the corresponding DD Form 2808 (Report of Medical Examination) shows the applicant underwent a pre-separation medical examination. She reported a history of strep throat, weather and pollen related allergies, shortness of breath, knee pain, and trouble sleeping related to throbbing in her legs. The applicant was deemed physically qualified for separation.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 10 June 2002 for failing to obey a lawful order by wrongfully traveling outside of a 350 mile radius on or between 25 April 2002 and

28 April 2002; for going from her appointed place of duty without authority and failure to obey a lawful order from an NCO, on or about 8 May 2002; for failure to obey a lawful order by not following the Battery Sick Call Policy, on or about 9 May 2002; and for failure to go at the time prescribed to her appointed place of duty, on or about 13 May 2002. Her punishment consisted of forfeiture of \$257.00 pay, 14 days of extra duty, and 14 days of restriction.

9. The applicant underwent a mental status evaluation on 20 June 2002. The examining provider determined there was no evidence of mental disease or defect warranting disposition through medical or psychiatric channels. The applicant was cleared for any administrative action deemed appropriate by the command.

10. A DA Form 669-1-R (Army Continuing Education System [ACES] Record Continuation Sheet), dated 22 June 2002, shows the applicant acknowledged being counseled concerning her Veterans Educational Benefits. The document further states a Soldier must complete 36-months of active duty and must obtain a fully honorable discharge to use MGIB benefits.

11. On 10 July 2002, a legal review by the Office of the Staff Judge Advocate, Criminal Law Division, determined the applicant's administrative separation packet was legally sufficient.

12. The applicant was notified by her immediate commander on 12 July 2002 of his intent to initiate separation action against her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. Her commander noted the applicant's two instances of punishment under Article 15 as reasons for the proposed separation action. The commander further recommended an under honorable conditions (general) discharge. The applicant acknowledged receipt of the notification on that same date.

13. The applicant consulted with counsel and was advised of the basis for the contemplated action to separate her and of the rights available to her. She acknowledged understanding that she may expect to encounter substantial prejudice in civilian life if a general discharge was issued to her and that she may be ineligible for many or all benefits under both Federal and State laws. She elected not to submit a statement in her own behalf.

14. Her immediate commander formally recommended her separation from service, before the expiration of her term of service, under the provisions of Army Regulation 635-200, Chapter 14, by reason of a pattern of misconduct. He further recommended rehabilitative requirements be waived and the issuance of an under honorable conditions (general) characterization of service. The intermediate commander concurred with the recommendations.

15. On 16 July 2002, the separation authority approved the recommended separation action, waived further rehabilitative requirements and transfer to the Individual Ready Reserve, and directed the issuance of a general discharge.

16. An additional DA Form 669-1-R, dated 30 July 2002, shows the applicant was counseled a second time concerning her Veterans Educational Benefits, and the requirement to complete 36 months of active duty and receive a fully honorable discharge to use MGIB benefits.

17. The applicant was discharged on 30 July 2002 under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct. Her DD Form 214 confirms her character of service was under honorable conditions (general). She was credited with 2 years and 26 days of net active service. Her DD Form 214 contains the following entries:

- item 24 (Character of Service) - Under Honorable Conditions (General)
- item 25 (Separation Authority) - Army Regulation 635-200, paragraph 14-12b
- item 26 (Separation Code) - JKA
- item 27 (Reentry Code) - 3
- item 28 (Narrative Reason) – Misconduct

18. The Army Discharge Review Board reviewed her petition for an upgrade of her under honorable conditions (general) characterization of service on 29 May 2013. After careful consideration, the Board determined the character of her discharge was commensurate with her overall service and there were insufficient mitigating factors to merit an upgrade. The Board denied her request for relief.

19. The ABCMR reviewed the applicant's request for an upgrade of her under honorable conditions (general) characterization of service on 25 March 2014. The Board determined the characterization and narrative reason for separation were appropriate for the circumstances of her case. Her overall service did not rise to the level of fully honorable, and her contentions regarding her discharge were not sufficiently mitigating. As there was no evidence of probable error or injustice, the Board denied her request.

20. The ABCMR reconsidered the applicant's request for a discharge upgrade on 15 November 2019. After careful consideration of the applicant's statement, record of service, frequency and nature of her misconduct, reason for separation, stated need for tuition assistance, and the absence of additional evidence to support her claim, the Board determined there was insufficient evidence of in-service mitigation to overcome the misconduct. Based upon the preponderance of evidence, the Board determined the character of service was not unjust and denied her request for relief.

21. Counsel provides the following:

a. A 49-page legal brief from the Veterans Legal Services Clinic at ██████████ School.

b. A psychiatric evaluation, dated 10 March 2023, and a psychological evaluation, dated 31 October 2022, from ██████████ of Medicine, conducted to determine if the applicant developed PTSD or other mental health conditions while in-service, if these conditions led to behavior resulting in disciplinary infractions while in-service, were these conditions related to racial/gender discrimination, and does the applicant continue to meet the diagnostic criteria for any mental health conditions. The findings of these evaluations will be further summarized in the medical review section of this record of proceedings.

b. Counseling records from the ██████████ Vet Center, dated 20 August 2019 and 14 February 2020, shows the applicant reports, in effect, the harassment she experienced while in the military led to her discharge. Her leadership did not respond in a favorable manner to her requests for support. She has thoughts of regret about leaving the military. She continues to experience panic attacks, anxiety, excessive worry, racing thoughts, self-doubt, shame, and guilt.

c. In a statement of support, dated 4 March 2023, ██████████ states, in effect, she served in the military with the applicant. The applicant was a good Soldier and hard worker, who was steady and even keeled. She made the best of things and did not complain. The author was surprised when she heard the applicant was discharged. She was not the kind of Soldier who got in trouble. The author never saw her have issues with anyone other than Sergeant ██████████. Things were tolerated as part of military culture which should not have been, to include alcohol use, sexism, inappropriate remarks about women, and racism. The applicant's discharge should reflect her honorable service.

d. In a statement of support, dated 13 December 2022, the applicant's mother states, in effect, she knows who her daughter was before, during, and after her military service. As a young girl and teen, she was happy, outgoing, and charismatic. She enlisted in the Army to better her future. She loved the Army. When a new sergeant was assigned to her platoon, everything changed. He gave her a hard time, yelled at her, and picked on her. She became withdrawn, angry, and depressed. He changed her. When she came home, she was not the same person. She has obtained her bachelor's and master's degrees. She is a loving mother and wonderful wife. However, she still experiences depression, anger, and nightmares. She deserves an upgrade so she can put this bad experience behind her.

e. In a statement of support, dated 3 March 2023, the applicant's son states, in effect, he is very close with his mom. She is supportive of his goals. She hopes to receive a discharge upgrade so she can help him get an education and have a good career. She has the best character. She is kind, patient, funny, empathetic, and values honesty, education, and time management. She is his role model. He is extremely proud of her. They started out in a small [REDACTED] apartment and now they live in a peaceful neighborhood with good schools. She is the glue that holds their family together. She has told him about her time in the military. Although it was not perfect, she loved serving her country.

f. In an undated statement of support, the applicant's manager states, in effect, the applicant is highly competent, well organized, outgoing, and an excellent communicator. Her ability to handle responsibility and work well with her colleagues is impressive. She has an excellent rapport with her co-workers, and everyone enjoys working with her.

g. A copy of the applicant's resume and college transcripts from [REDACTED] College, dated Summer 2013 to Fall 2020, highlight her post-service accomplishments, to include the award of her bachelor's and master's degrees in business administration.

h. A copy of the applicant's 145 page OMPF, dated 10 January 2000 to 21 August 2020, is summarized above.

i. A copy of the applicant's Service Treatment Records (86 pages), include records dated 11 January 2000 to 14-Nov-2001.

j. Two Curriculum Vitae, for [REDACTED], M.D., dated 10 April 2023, and [REDACTED], PhD, dated 26 April 2022, provide statements of educational background and experience for the doctors who completed the applicant's psychiatric and psychological evaluations.

22. On 14 November 2023, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

23. Additionally, in the processing of this case, ARBA, CMD, requested an advisory opinion from U.S. Army Human Resources Command (USAHRC), pertaining to the transfer of Education Benefits. USAHRC provided a response on 28 November 2023, wherein they recommended disapproval of the applicant's request for Post 9/11 GI Bill Transfer of Education Benefits (TEB). USAHRC stated:

a. TEB is a retention incentive requiring an additional service obligation (ASO). Calculated from the Soldier's TEB request date. To transfer benefits to a dependent, the Soldier must be on active duty or in the Selected Reserve on or after 1 August 2009; have at least six years in active duty or the Selected Reserve status; and have no



current negative action flag, commit to the ASO, and transfer benefits utilizing the TEB website prior to separation or retirement. There is no provision for waiving this requirement.

b. TEB is neither a reward for service nor a transition benefit. It is a retention incentive, requiring commitment to and fulfillment of the mandatory by-law four-year ASO.

c. The applicant served in the Regular Army from 5 July 2000 to 30 July 2002; for a total of two years and 26 days of service. She is not eligible because the Post 9/11 GI Bill education benefit and the accompanying TEB retention incentive were not implemented until 1 August 2009.

d. Even if she had served during the implementation period, she personally would not qualify for the education benefit due to her service characterization of under honorable conditions (general).

e. Even if she were eligible, her dependent child would be ineligible to participate in the program. The applicant indicates her dependent child was born approximately four years after she left service. A family member must be enrolled in the Defense Eligibility Enrollment Reporting System (DEERS) and be eligible for benefits at the time of transfer to receive educational benefits. Since the applicant was never eligible for the TEB program due to her separation prior to the implementation date, and the fact that her son was born after her separation date, her dependent child was never eligible to receive a transfer of education benefits.

f. For the applicant to qualify for both the Post 9/11 GI Bill and its TEB retention incentive, her service date must be extended to on/about 2 August 2013, which would be more than 11 years after her separation date. Additionally, her characterization of service must be changed to "Honorable." A discharge upgrade would only affect her eligibility for the Post 9/11 GI Bill benefits and not her son's eligibility to receive a transfer of education benefits from her.

24. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, by reason of pattern of misconduct, "JKA" is the appropriate separation code.

25. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

## 26. MEDICAL REVIEW:

a. Request: The applicant is requesting reconsideration of her previous request for an upgrade of her under honorable conditions (general) characterization of service, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to change her narrative reason for separation from "Misconduct" to "Disability, Permanent" and a change in the corresponding separation program number (SPN), modification of her record to credit her for 10 years of service, and modification of her record to reflect a transfer of her Montgomery GI Bill (MGIB) benefit to her son.

b. This opine will only focus on the applicant's upgrade and disability request.

c. 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:

- The applicant enlisted in the Regular Army on 5 July 2000.
- Applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 21 February 2002, for failure to go at the time prescribed to her appointed place of duty, being disrespectful in language towards a superior non-commissioned officer (NCO) and being derelict in the performance of her duties by failing to keep her weapon with her, on or about 17 January 2002.
- She was formally counseled on five occasions between 2 May and 13 May 2002. Areas of emphasis covered in the counseling include, but are not limited to:
  - violation of the brigade pass and leave policy
  - failure to report on two occasions
  - failure to obey a lawful order
  - failure to use battery sick call procedures
- Applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 10 June 2002, for failing to obey a lawful order by wrongfully traveling outside of a 350 mile radius, on or between 25 April 2002 and 28 April 2002; for going from her appointed place of duty without authority and failure to obey a lawful order from an NCO, on or about 8 May 2002; for failure to obey a lawful order by not following the Battery Sick Call Policy, on or about 9 May 2002; and for failure to go at the time prescribed to her appointed place of duty, on or about 13 May 2002.
- Applicant was notified by her immediate commander on 12 July 2002 of his intent to initiate separation action against her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. Her commander noted the applicant's two Articles 15 as reasons for the proposed separation action. The commander further

recommended an under honorable conditions (general) discharge. The applicant acknowledged receipt of the notification on that same date.

- Applicant was discharged on 30 July 2002, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of misconduct. Her DD Form 214 confirms her character of service was under honorable conditions (general) with Separation Code JKA and Reentry Code 3.
- The Army Discharge Review Board reviewed her petition for an upgrade of her under honorable conditions (general) characterization of service on 29 May 2013. After careful consideration, the Board denied her request for relief.
- The ABCMR reviewed the applicant's request for an upgrade of her under honorable conditions (general) characterization of service on 25 March 2014. They denied her request.
- The ABCMR reconsidered the applicant's request for a discharge upgrade on 15 November 2019. The Board determined the character of service was not unjust and denied her request for relief.

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), legal brief, self-authored statement, medical documentation, DD Forms 214, statements of support, and documents from her service record and separation. 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. Applicant's counsel states while in the military she struggled with undiagnosed and untreated PTSD, due to sexual harassment, fear of a potential sexual assault, and traumatic sexual and racial discriminatory treatment.

e. The applicant states she enlisted in the military right after high school. She wanted a career, sense of security, responsibility, and independence. She also thought it would help her continue her education. She was an outstanding Soldier and showed promise in her initial entry training. When she arrived at Fort Bliss, she was the only supply specialist in her unit. She took her job seriously and maintained a high standard. Regarding her social life, she was the only Black Latina woman. She did not always feel like she fit in, but everyone got along. At one point, people started calling her "Fellatio" because it sounded like her last name. She does not recall anyone else getting a sexualized nickname. She acted like it did not bother her because she did not want problems. She recalls everyone went out on weekends and it was common for people to dance together, which was sometimes sexually suggestive. There was often an expectation for the women to go home with the men. This made her uncomfortable. She did not dance much and made it clear she did not want to go home with anyone. She set boundaries and kept a tough expression. One evening, a specialist in her unit gave her a bottle of whiskey. She drank too much, went to her room, and passed out on her

bed. When she woke up, she was with the Emergency Medical Technicians (EMTs). She was not wearing a bra or underwear and does not remember anything that happened. She heard she was with another person, ended up in his room, and passed out there. If anyone raped her, she would not have known. She was referred for alcohol abuse counseling. She only went to one session because it was an isolated incident. She had a bad experience with the counselor, who was a white woman. No one seemed concerned about whether anything bad happened. She was not advised to get a rape kit. Nor did anyone follow up with the man she was with that night. She started getting into trouble after that incident. Things got worse after Sergeant (SGT) [REDACTED] arrived. He picked on her, belittled her, and screamed in her face. On one occasion, she was having trouble getting a sample for a unit drug test. He yelled at her aggressively and accused her of doing drugs. He treated her differently from others. He always put her on command post (CP) duty and denied her requests for leave. He was white, and she wondered if it was because she was an Afro-Latina woman. Her mental health deteriorated. She was depressed and anxious. She started drinking to escape how she was feeling. She felt trapped and desperate. One weekend, she went [REDACTED] to see her boyfriend without permission because she needed to get off base and receive emotional support. She received other disciplinary punishment for failing to show up for work at the supply room when she had scheduled supply staff meetings which she was required to attend, rather than going to the supply room. The sergeant yelled at her, threatened to demote her, and physically removed the rank from her uniform. She does not recall all the specifics of her misconduct. She feels like she had a target on her back. She still wanted to be in the Army and continued to take her duties seriously and take pride in her work. She requested a transfer, but CPT [REDACTED] said they needed her. He made it clear he would not do anything to help her. Her mental health got worse. She drank more, felt on-edge, could not relax, and was irritable and angry. She accepted a general discharge because she felt she had no choice. She deeply regrets her service ended this way.

f. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant submitted hardcopy documentation from her time in service. A Report of Medical History, dated 23 May 2002, shows the applicant underwent a pre-separation medical examination. She reported a history of strep throat, weather and pollen related allergies, shortness of breath, knee pain, and trouble sleeping related to throbbing in her legs. The applicant was deemed physically qualified for separation. The applicant underwent a mental status evaluation on 20 June 2002. The examining provider determined there was no evidence of mental disease or defect warranting disposition through medical or psychiatric channels. The applicant was cleared for any administrative action deemed appropriate by the command.

g. No VA electronic medical records are available for review and the applicant is not service connected. However, a psychiatric evaluation from Yale School of Medicine, dated 10 March 2023, diagnosed the applicant with Post-Traumatic Stress Disorder (PTSD), related to her experience of MST, as well as Major Depressive Disorder

(MDD), and Alcohol Use Disorder in sustained remission. In addition, a psychological evaluation dated 31 October 2022, also from Yale School of Medicine, indicates ongoing MST related symptoms of PTSD, including anxiety and depression. Counseling records from the New Haven Vet Center, dated 20 August 2019 and 14 February 2020, show the applicant was treated for her experience of MST and racialized harassment she experienced while in military service.

h. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant experienced MST and a subsequent behavioral health condition during military service. The applicant's experience and behavioral health condition provide mitigation of her misconduct.

i. However, both the medical and behavioral health evaluations the applicant received prior to separation determined there was no evidence of medical or mental disease or defect warranting disposition through medical or psychiatric channels. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has provided documentation from civilian providers that she evidences symptoms of PTSD, including anxiety and depression; they do not address whether a medical condition met or failed Army retention criteria, if it was a ratable condition, or if the applicant failed to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

#### 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 MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant provides documentation from civilian providers diagnosing her with MST-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Overall, there is evidence of a mitigating experience, MST, and a subsequent BH condition, PTSD with symptoms of anxiety and depression. The applicant reports experiencing MST during military service that impacted her mental health and provides documentation from her civilian providers indicating a diagnosis of MST-related PTSD.

Given the nexus between MST-related PTSD and difficulty with authority as well as avoidance, the applicant’s pattern of misconduct is mitigated.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct and the reason for her separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor.
2. The Board concurred with the conclusion of the ARBA BH Advisor that the applicant’s MST-related PTSD mitigates the pattern of misconduct that led to her discharge. Based on a preponderance of the evidence, the Board determined the applicant’s character of service should be changed to honorable and the reason for her discharge should be changed to Secretarial authority.
3. The Board found no evidence that would support correction of the applicant’s record to show she completed 10 years of service. The Board determined the period of active duty captured on her DD Form 214 is not in error or unjust.
4. For the reasons described in the advisory opinion provided by USAHRC, the Board determined there is no basis for the relief the applicant has requested related to the Post 9/11 Veterans Educational Assistance Act.

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 reissuing her DD Form 214 to show the following entries:

- Item 24 – Honorable
- Item 25 – AR 635-200
- Item 26 – JFF
- Item 28 – 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 any relief in excess of that described above.

6/27/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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 (USC), Section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent.
2. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.
3. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

4. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component and ARNG/ARNGUS members, these standards are applicant during the enlistee's first period of active duty for training (ADT).

5. Army Regulation 635-5-1 (SPD) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JKA" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12b, by reason of pattern of misconduct.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is



interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

7. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

8. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

9. 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//