

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008257

APPLICANT REQUESTS:

- reconsideration of her previous request to upgrade her under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Three Letters of Support
- Certified Clinical Hemodialysis Technician Certificate, 30 September 2014
- Certified Phlebotomy Technician Certificate, 27 September 2020
- Basic Life Support Program, 23 February 2021
- Baptism Photo

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 Docket Number AR20210016465 on 8 June 2022.

2. The applicant states:

a. She is requesting a discharge upgrade. She was young when everything occurred and made some choices based off impulse and what she was going through. She is a lot more educated now and knows that she could have done things differently, but she still feels like if she did not leave when she did, she may not be here today. She knows it will be hard to prove her case because other than her word, there is no real proof.

b. If you look at her history, why would she choose to go absent without leave (AWOL) out of the blue. Most people go AWOL during boot camp if they do not like the Army. She completed boot camp at Fort Sill, OK and advanced individual training (AIT)

at Fort Bliss, TX. Why would she wait until she gets to her actual duty station (the easy part) to go AWOL. That would not make sense. She states, something had to happen to her to make a decision like that. She felt like if she did not leave something bad was going to happen to her. She used to think that she deserved it, but the older she has gotten and the veterans she has told her story to have made her realize that this was not her fault, and she needs to fight to get her discharge upgraded. Nobody deserves that kind of treatment just because of their sexual orientation. She is not a bad person and has made mistakes in her life, but when she joined the Army, she planned on doing 20 years.

c. After informing her first sergeant (1SG) that she was gay, she started getting harassed, emotionally abused, and threatened to the point that she felt her life was in danger. She tried to report the threats and harassment, but the reports seemed to make things worse. It got to the point that she felt like if she did not get out of the situation right at that time then something bad would have happened to her, so she felt she had no other choice than to go AWOL. She feared for her life and at that time, she felt embarrassed to discuss those events with anybody. She also was in fear of retaliation if she tried to discuss the traumatizing events.

d. She has finally built up the courage to discuss these events because she knows now that she did not deserve to go through that type of trauma. There was sexual trauma and emotional trauma that took her years to get past and some of the events she still suffers with at times. She suffers with post traumatic stress disorder (PTSD) and after being diagnosed with scoliosis while she was in the Army, her life has changed drastically.

e. She states her criminal record from before she joined the Army was brought up in the previous case and it makes her look bad. It appears that “you” are only looking for the bad things about her. Enlisting in the Army is a choice she made on her own without anyone forcing her and her intent was to stay in until she retired. She did not intend on things happening the way that they did because honestly, she never knew that type of harassment was condoned in the military. She thought she was in a safe place when she joined the military.

f. Since leaving the Army she has accomplished a lot. She graduated from college, became a medical assistant, got certified to be a phlebotomist and hemodialysis technician, and she is currently a lab assistant at a cancer facility.

3. The applicant provides the following:

a. Three character references from coworkers and close acquaintances which state the applicant is a hard worker, dependable, and patients love her. She is caring, has

great work ethic, and always volunteers to do extra and anything she can do, especially if she knows it will benefit the patients in any way.

b. A certificate, dated 30 September 2014, which shows the Nephrology Nursing Certification Commission certified that she successfully fulfilled the educational practice, and written examination requirements merits the designation certified Clinical Hemodialysis Technician.

c. A certificate, dated 27 September 2020, which states the applicant successfully completed the requirements set forth by the National Health Career Association as a certified Phlebotomy Technician.

d. A certificate, dated 23 February 2021, which shows she successfully completed the cognitive and skills evaluation in accordance with the curriculum of the American Heart Association Basic Life Support Program.

e. A photo (presumably) of the applicant getting baptized.

4. A review of the applicant's service record shows:

a. The applicant enlisted in the Regular Army on 22 March 2000.

b. Her duty status changed on the following dates:

- Present for Duty (PDY) to AWOL – 12 December 2000
- AWOL to PDY – 14 December 2000
- PDY to AWOL – 27 December 2000
- AWOL to PDY – 11 January 2001
- PDY to AWOL – 27 February 2001
- AWOL to Dropped from Rolls (DFR) – 29 March 2001

c. DD Form 616 (Report of Return of Absentee), dated 9 May 2001, shows the applicant surrendered to military authorities in Jacksonville, FL and was transferred to the Personnel Control Facility at Fort Knox, KY.

d. Court-martial charges were preferred against the applicant on 14 May 2001. Her DD Form 458 (Charge Sheet) shows she was charged with one specification of being AWOL from on or about 23 December 2000 to on or about 10 January 2001 and one specification of being AWOL from on or about 27 February 2001 to on or about 9 May 2001.

e. On 14 May 2001, the applicant signed a memorandum stating she knowingly, willingly, and voluntarily declared that she was AWOL from the U.S. Army from on or about 23 December 2000 to on or about 10 January 2001 and from on or about 27 February 2001 to on or about 9 May 2001. She made the admission for administrative purposes only so she could process out of the Army and realized in doing so she may be given an other than honorable conditions discharge.

f. On 14 May 2001, after consulting with legal counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In doing so, she acknowledged that the charges preferred against her under the Uniform Code of Military Justice (UCMJ), authorized the imposition of a bad conduct or dishonorable discharge. She further acknowledged:

- she had not been subjected to coercion with respect to her request for discharge
- she had been advised of the implications that were attached to it by submitting the request
- by submitting the request, she was acknowledging she was guilty of the charge(s) against her or of a lesser included offense(s) therein contained which also authorized the imposition of a bad conduct or dishonorable discharge
- she stated that under no circumstances did she desire further rehabilitation, for she had no desire to perform further military service
- she further understood that she may be discharged under conditions which were other than honorable and furnished an Under Other Than Honorable Discharge certificate
- 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 Veteran's Administration
- she could be deprived of her rights and benefits as a veteran under both Federal and State law
- she could encounter substantial prejudice in civilian life because of an under other than honorable discharge
- she understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency or the ABCMR
- she was advised she could submit any statements in her own behalf and elected not to do so

g. On 7 January "2001" [sic], the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with a characterization of service under other than honorable conditions.

h. The separation authority approved the recommended discharge on 25 January 2002, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

i. The applicant was discharged on 5 February 2002. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, Chapter 10, in the lowest enlisted grade, and her service was characterized as under other than honorable conditions. Her DD Form 214 also shows in:

- Item 12c (Net Active Service This Period): 1 year, 7 months, and 16 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon
- Item 18 (Remarks): Member has not completed first full term of service.
- Item 29 (Dates of Time Lost During This Period): 20001212 – 20001213; 20001227 – 20010110; 20010227 – 20010508

5. A memorandum from the U.S. Army Criminal Investigation Division, dated 9 March 2022, shows a search of the Army's criminal file indexes revealed no records pertaining to the applicant.

6. The ABCMR considered the applicant's request to upgrade her under other than honorable conditions characterization of service in ABCMR Docket Number AR20210016465, on 8 June 2022. 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 her characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the medical opinion finding there is no documentation to support a behavioral health diagnosis at the time of her discharge. There are no documented psychiatric diagnoses to consider with respect to mitigation. The applicant provided no post service accomplishments or character letters of reference for the board to weigh a clemency determination. The Board agreed there is no evidence supporting the applicant was experiencing PTSD or mental health condition while on active service, and JLV is void of any history of VA medical treatment. Based on this, the Board determined relief was not warranted and denied relief.

7. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within the Board's 15-year statute of limitations.

8. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, Chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

9. In reaching its determination, the Board can consider the applicant's petition, her service record, and her statements in light of the published guidance on equity, injustice, or clemency.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of her previous request to upgrade her under other than honorable conditions discharge. She contends PTSD, sexual harassment, and DADT mitigates her discharge.

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 RA on 22 March 2000.
- Court-martial charges were preferred against the applicant on 14 May 2001. Her DD Form 458 (Charge Sheet) shows she was charged with one specification of being AWOL from on or about 23 December 2000 to on or about 10 January 2001 and one specification of being AWOL from on or about 27 February 2001 to on or about 9 May 2001.
- On 14 May 2001, the applicant signed a memorandum stating she knowingly, willingly, and voluntarily declared that she was AWOL from the U.S. Army from on or about 23 December 2000 to on or about 10 January 2001 and from on or about 27 February 2001 to on or about 9 May 2001. She made the admission for administrative purposes only so she could process out of the Army and realized in doing so she may be given an other than honorable conditions discharge.
- Applicant was discharged on 5 February 2002. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 10, in the lowest enlisted grade, and her service was characterized as under other than honorable conditions.
- ABCMR considered the applicant's request to upgrade her under other than honorable conditions characterization of service in ABCMR Docket Number AR20210016465, on 8 June 2022. The Board determined relief was not warranted and denied 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), DD Form 214, self-authored statement, previous consideration of the applicant's case by the Army Board for Correction of

Military Records (ABCMR), character reference letters, and documents from her service record and separation packet. 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 states she was young when everything occurred and made some choices based off impulse and what she was going through. She is a lot more educated now and knows that she could have done things differently, but she still feels like if she did not leave when she did, she may not be here today. She knows it will be hard to prove her case because other than her word, there is no real proof. If you look at her history, why would she choose to go absent without leave (AWOL) out of the blue? Most people go AWOL during boot camp if they do not like the Army. She completed boot camp at Fort Sill, OK and advanced individual training (AIT) at Fort Bliss, TX. Why would she wait until she gets to her actual duty station (the easy part) to go AWOL. That would not make sense. She states, something had to happen to her to make a decision like that. She felt like if she did not leave something bad was going to happen to her. She used to think that she deserved it, but the older she has gotten and the veterans she has told her story to have made her realize that this was not her fault, and she needs to fight to get her discharge upgraded. Nobody deserves that kind of treatment just because of their sexual orientation. She is not a bad person and has made mistakes in her life, but when she joined the Army, she planned on doing 20 years. After informing her first sergeant (1SG) that she was gay, she started getting harassed, emotionally abused, and threatened to the point that she felt her life was in danger. She tried to report the threats and harassment, but the reports seemed to make things worse. It got to the point that she felt like if she did not get out of the situation right at that time then something bad would have happened to her, so she felt she had no other choice than to go AWOL. She feared for her life and at that time, she felt embarrassed to discuss those events with anybody. She also was in fear of retaliation if she tried to discuss the traumatizing events. She has finally built up the courage to discuss these events because she knows now that she did not deserve to go through that type of trauma. There was sexual trauma and emotional trauma that took her years to get past and some of the events she still suffers with at times. She suffers with post traumatic stress disorder (PTSD) and after being diagnosed with scoliosis while she was in the Army, her life has changed drastically. She states her criminal record from before she joined the Army was brought up in the previous case and it makes her look bad. It appears that "you" are only looking for the bad things about her. Enlisting in the Army is a choice she made on her own without anyone forcing her and her intent was to stay in until she retired. She did not intend on things happening the way that they did because honestly, she never knew that type of harassment was condoned in the military. She thought she was in a safe place when she joined the military. Since leaving the Army she has accomplished a lot. She graduated from college, became a medical assistant, got certified to be a phlebotomist and hemodialysis technician, and she is currently a lab assistant at a cancer facility.

e. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide hardcopy documentation to support a behavioral health diagnosis during her time in service. The applicant is not service connected and there are no VA medical records available for review. In addition, the applicant did not submit any medical documentation post-military service substantiating her assertion of PTSD.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a behavioral health condition during military service that mitigates her discharge. However, per Liberal Consideration guidelines, the applicant's assertion of sexual harassment is sufficient to warrant consideration by the Board.

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 PTSD, sexual harassment, and DADT mitigates her discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing sexual harassment and threats to her life due to her sexual orientation. However, she provides no medical documentation to support her self-assertion of PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant provides no medical documentation to support her self-assertion of PTSD. However, per Liberal Consideration guidelines, the applicant's assertion of sexual harassment is sufficient to warrant consideration by the Board. Given the nexus between sexual harassment and avoidance, the applicant's incidents of AWOL, which resulted in her discharge, are mitigated by her experience of MST. In accordance with the ARBA policy regarding MST and liberal consideration, it is recommended the applicant's character of service be upgraded to Honorable and her narrative reason changed to Secretarial Authority.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's 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 determination requests for upgrade of her characterization of service. Upon review of

the applicant's petition, available military records and the medical advisory, the Board concurred with the advising official finding that the applicant's conduct was mitigated by her behavioral health condition during service. Additionally, the Board noted the applicant's post-service achievements as a contributing factor to warrant a discharge upgrade.

2. 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:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): AR 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who had committed an offense or offenses, for which the authorized punishment included a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. Commanders will ensure that a Soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences. This paragraph also provides that the Soldier's written request will also include an acknowledgement that the Soldier understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a punitive discharge. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

b. 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 than honorable characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions and when authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.

2. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

4. Section 1556 of Title 10, United States Code, 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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//