

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008417

APPLICANT REQUESTS: her under other than honorable conditions (UOTHC) discharge be upgraded to honorable or under honorable conditions (general).

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Letter
- Applicant's Mother Letters (two)
- Congressional Coordinator Letter, dated 12 September 1989
- Senator Letter, dated 13 September 1989
- Return to Sender Envelope, dated 1 September 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. She included letters written at the time to Senator B__. Her mother also wrote to him on her behalf, to help get her separated. She was also concerned for the applicant's mental health. She was experiencing anxiety and other difficulties in basic training and advanced individual training (AIT). She was having emotional problems related to being in service. The training environment was stressful. Her anxiety got worse while in AIT. She spoke with her first sergeant multiple times asking for separation. Her concerns were never addressed. She was repeatedly advised to give it time, things would get better. She felt her only option was to go absent without leave (AWOL). This decision resulted in a negative discharge. Her mental health suffered extremely, and she was not given any help. In support of her application, she included letters written at the time to her Senator. Her mother also wrote to Senator B__ on her behalf, to help get the applicant separated. She was also concerned for the applicant's mental health.

b. Her letter, to her Senator, at the time, shows the applicant stated she was treated like trash, there was a lot of hollering in the Army. She would wake at night crying because of the nightmares that were constantly haunting her. She was very unhappy and felt herself becoming mentally unstable because of it. Despite all the misery she preceded to AIT. She encountered a medical issue, and her commander told her to wait until she got to permanent party because things would be different. While waiting for her reclassification to her second military occupational specialty (MOS) her medical problem was treated; however, she discovered the medical problem still existed and she lost all faith in the Army. She completed her second MOS and her doctor said to wait until she got to permanent party for treatment of the medical issue and that if not corrected immediately it could damage her physical ability to conceive a child, at that moment her heart stopped and from that day forward her medical problem has been a priority.

c. She went through her chain of command. Her doctor lied and she was overwhelmed with anger and depression. She considered killing herself several times. She couldn't deal with it any longer. She needed some peace one way or another and she would get it.

3. The applicant enlisted in the Regular Army on 17 November 1988 for three years. Her MOS was 76C (Equipment Records and Parts Specialist).

4. The applicant was AWOL on 10 July 1989 and dropped from the rolls on 10 August 1989.

5. Court-martial charges were preferred against the applicant on 11 August 1989 for violations of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with AWOL on or about 10 July 1989 and remained so absent.

6. The applicant surrendered to military authorities at Fort Meade, MD on 6 November 1989.

7. An updated DD Form 458 shows court-martial charges were preferred against the applicant on 7 November 1989 for AWOL from on or about 10 July 1989 until on or about 6 November 1989.

8. A Personnel Control Facility Interview Sheet, dated 8 November 1989, shows the applicant had a medical problem that wasn't being properly cared for; therefore, she left to get it done immediately after. Before going AWOL she saw the company commander and three different doctors.

9. A Medical Option Statement, dated 8 November 1989, shows the applicant did not desire a separation medical examination.

10. On 9 November 1989, the applicant requested a delay in court marital processing until the commanding general acted on her request for discharge.

11. The applicant consulted with legal counsel on 9 November 1989 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 a UOTHC discharge; and the procedures and rights that were available to her.

a. After consulting with legal counsel, she voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. 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 Veterans Administration, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws and she may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. She elected not to submit statements in her own behalf.

12. The applicant's commander recommended approval of her request for discharge in lieu of trial by court-martial on 17 November 1989. He further recommended the issuance of a UOTHC discharge.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 29 November 1989. He directed the applicant's reduction to the lowest enlisted grade with the issuance of an UOTHC characterization of service.

14. The applicant was discharged on 14 December 1989. 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, for the good of the service-in lieu of court-martial with Separation Code KFS and Reenlistment Code 3, 3B, and 3C. Her service was characterized as UOTHC. She completed 9 months of net active service. She lost time from 10 July 1989 to 5 November 1989.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. The applicant provides:

a. A letter from her mother, dated 10 July 1989, states she was concerned about her daughter's mental well-being. The applicant had threatened suicide if she was made to remain in the Army and she had a medical problem which had been in existence for

more than three months and still had not been corrected. The mother iterated the above and the applicant was not prone to making rash moves like she did when she left base. Her mother provided information regarding a phone conversation with Senator B__'s office.

b. A congressional coordinator letter, dated 12 September 1989, shows the applicant was AWOL and her medical diagnosis. She was having an allergic reaction to the medication. The applicant could not be considered for discharge while she was AWOL.

c. A letter from Senator B__, dated 13 September 1989, shows an interim reply regarding the applicant.

17. On 1 September 2023, the applicant was asked to provide medical documents that support her issue of PTSD. As of 1 October 2023, no response was provided.

18. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable. She contends she was experiencing mental health that mitigate her misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 17 November 1988; 2) Court-martial charges were preferred against the applicant on 7 November 1989 for being AWOL from 10 July-6 November 1989; 3) The applicant was discharged on 14 December 1989, Chapter 10, for the good of the service-in lieu of court-martial. Her service was characterized as UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions as a contributing and mitigating factor in the circumstances that resulted in her separation. There is insufficient evidence the applicant was diagnosed with a mental health condition while on active service. There was evidence the applicant was experiencing difficulty adjusting to military life, and she felt that a medical issue was not being addressed adequately at the time. The

medical issue noted was not a duty limiting condition. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated her misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing a mental health condition that contributed to her misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions while on active service. The applicant did go AWOL, which can be a sequelae some mental health conditions, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends she was experiencing a mental health condition that mitigates her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

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 applicant was charged with commission of an offense (AWOL) 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 under other than honorable conditions discharge. The Board found no error or injustice in her separation processing. 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 insufficient evidence to support the applicant had condition or experience that mitigated her misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a

preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The 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, USC, 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 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. AR 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

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 (DRB) and Service 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. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. 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 (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs 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//