

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008430

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) as follows:

- show her uncharacterized service as honorable
- correction of item 1 (Name) to show her last name as Rxxxxxxxxxx
- personal appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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, she reported someone for sexual assault and did not want to be on the same base as the individual. She was ordered not to speak to the police. The next thing she knew, she was being discharged.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 28 June 1985. Her last name is shown as Knxx on her DD Form 4 (Enlistment/Reenlistment Document). She was ordered to active duty for the completion of initial entry training, with a report date of 30 October 1985.
4. A DA Form 2496 (Disposition Form), dated 7 March 1986, shows the applicant was recommended for relief from Course 301-91D10 (Operating Room Specialist Course), due to academic deficiency. The accompanying justification states, in effect, [the applicant] was referred to an academic board due to academic failure. She attributed her academic deficiency to "inability to adjust to the Army, a multitude of personal problems, and health problems." She was referred to the chaplain, "ER" liaison, and pulmonary function clinic. She was not considered a candidate for recycle. However,

she would be considered for reenrollment pending resolution of her adjustment, personal, and physical problems.

5. The applicant underwent a mental health evaluation on 19 March 1986. The examining provider remarked that based upon [the applicant's] past and present difficulties adapting socially and emotionally to the demands of disciplined military service, it was evident she lacked the proper attitude and motivation required to sustain a successful career in the military. The provider recommended the expeditious handling of an administrative separation and further stated there was no evidence of a mental or psychiatric disorder.

6. The applicant was formally counseled on 26 March 1986. Areas of emphasis covered in the counseling included her dismissal from 91D military occupational specialty (MOS) training, her urgent desire for discharge, and the commander's intent to request her administrative separation.

7. The applicant was not required, by regulation, to have a medical examination prior to separation. On 8 April 1986, the applicant elected not to undergo a pre-separation medical examination.

8. A DA Form 2496, dated 11 April 1986, from the Reserve Liaison, USAR, shows Headquarters, 1st Army, concurred with the recommendation for discharge under the Trainee Discharge Program.

9. The applicant's immediate commander notified her on 23 April 1986 of his intent to initiate action to discharge her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, by reason of entry level performance and conduct (Trainee Discharge Program). As the specific reason, the commander stated the applicant's failure to adjust to the military environment, causing her severe stress, which was resulting in physical and mental problems. She was academically dropped from the 91D course. Poor grades attributed to her inability to adjust and multitude of personal problems.

10. On that same date, the applicant acknowledged receipt of the proposed separation notification, and acknowledged understanding, if approved, she would be receiving an entry level separation with uncharacterized service. She was advised of the reasons for separation and of the rights available to her. She elected not to submit a statement in her own behalf.

11. The applicant's immediate commander formally recommended her separation under the provisions of AR 635-200, paragraph 11-3a, on 25 April 1986.

12. The separation authority approved the recommendation on 25 April 1986 and directed an entry level separation (uncharacterized) from service.

13. The applicant was discharged on 2 May 1986, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status performance and conduct. Her DD Form 214 shows her last name as Knxx and confirms her character of service was entry level status (uncharacterized), with separation code JGA and reenlistment code RE-3. She was credited with 6 months and 3 days of net active service. The applicant was not awarded a MOS.

14. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

15. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.

16. The applicant does not provide evidence that her last name was legally changed during her period of active duty service.

17. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her discharge to show her uncharacterized service as honorable. She contends she experienced military sexual trauma (MST) that mitigates her discharge. 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 U.S. Army Reserve (USAR) on 28 June 1985. She was ordered to active duty for the completion of initial entry training, with a report date of 30 October 1985; 2) On 7 March 1986, the applicant was recommended for relief from the Operating Room Specialist Course due to academic deficiency; 3) The applicant was discharged on 2 May 1986, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status performance and conduct. Her character of service was entry level status (uncharacterized).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's

Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant reported she experienced MST, which was a contributing and mitigating factor in the circumstances that resulted in her separation. On 7 March 1986, when the applicant was recommended for relief from her course for academic deficiency, it was stated she was referred to the “chaplain, “ER” liaison, and pulmonary function clinic.” The applicant also underwent a mental health evaluation on 19 March 1986. The examining provider found the applicant presented problems with adapting socially and emotionally to the demands of disciplined military service. She was recommended for an administrative separation, and she did present evidence of experiencing a psychiatric disorder. A review of JLV was void of any medical documentation related to the applicant, and she does not receive any service-connected disability.

d. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant has been diagnosed with a mental health condition related to her report of MST or active service. However, she reports experiencing MST during her active. In accordance with the liberal consideration memo, the applicant’s contention of MST alone is sufficient to be considered by the board in reaching its final determination.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experienced MST that contributed to her discharge from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she was experienced MST during her initial training that contributed to her discharge.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, the applicant reports experiencing MST during her initial training, which could have impacted her performance and ability to complete her training. Also, in accordance with the liberal consideration memo, the applicant’s contention of MST alone is sufficient to be considered by the board in reaching its final determination.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Name: Deny. The evidence of record shows she used the contested last name (starts with the letters Kn) during her service. The Board found no evidence she used the requested name (starts with the letters Ra that she currently uses) during her service. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice.

b. Character of service: Deny. The applicant was separated for entry level performance and conduct under the Trainee Discharge Program following what her chain of command's noted as her failure to adjust to the military environment, being academically dropped from the 91D course, and poor grades attributed to her inability to adjust/multitude of personal problems. She completed 6 months and 3 days of initial entry training and was not awarded an MOS. She received an uncharacterized discharge. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support the applicant has been diagnosed with a mental health condition related to her report of MST or active service.

c. Regulatory guidance provides that service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Because the applicant had not completed IET, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

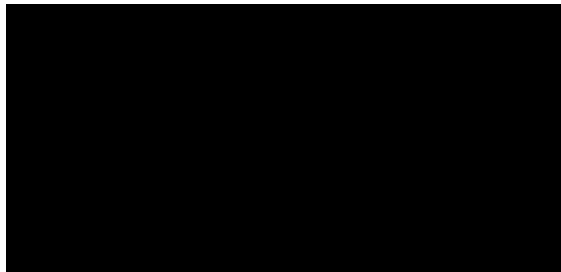
: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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, 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.

3. 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 regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

6. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions,

official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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//