

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008525

APPLICANT REQUESTS:

- an upgrade of her discharge under other than honorable conditions (UOTHC)
- that the narrative reason for her separation be changed to show she was separated due to medical disability

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Character reference letters (4)

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 at her first duty station, Fort Lewis, WA, she was challenged with many decisions while performing her military occupational specialty (MOS). She became overwhelmed performing her duties and trying to fit in the office environment. As a young female Soldier who did not really understand her duties, she became confused and had to depend upon her superior noncommissioned officers (NCOs) for guidance; and that was violated.

a. She went off the base to Sergeant (SGT) B's place, where she thought she was going to receive more advice and information on how to perform her MOS duties. Instead, SGT B introduced her to alcohol and cocaine. After the night of drinking and doing drugs, the only thing that she remembers is waking up in a drowsy state, confused, disoriented, and partially nude with the feeling she had been raped. She became more afraid and was scared to tell anyone what had happened to her. She was even more afraid to see SGT B or any other male figure.

b. After a while, she was reassigned to Korea. She was relieved that she was leaving the trauma behind, but she found herself in the same situation, this time with SGT F. She could not tell anyone due to fear for her life, and that no one would believe her. She continued drinking and doing drugs to self-medicate the fear, anxiety, and nightmares that made her believe she was being attacked and raped again.

c. When she went home on medical convalescent leave it was not her intention to go absent without leave (AWOL). However, right after returning home, her baby brother [LFG] was murdered. This greatly exacerbated her anxiety and fear as she thought about what could happen to her if she went back to Korea and reported what had happened to her.

d. She lost trust in her male superiors and fellow comrades and lived each day in fear. She truly feels that had she been given the opportunity to tell her story before the Army Physical Evaluation Board, or whatever board the Army provides, without fear of reprisal, she would have continued her military career. In no way is she justifying her AWOL, but her continuous use of alcohol and drugs were just trying to self-medicate so she could cope with her military sexual trauma (MST) experiences.

e. Following her discharge, she could not afford medical care and her addiction to drugs and alcohol, along with prostitution spun out of control. In 2003, everything changed when she gave her life to Christ, sought help with her medical issues, and was able to speak a little on her experience with MST.

3. On 27 May 1988, the applicant enlisted in the Regular Army for a period of 4 years. She was advanced to the rank/pay grade of private (PV2)/E-2 on 5 October 1988, and that was the highest rank she held. She was initially stationed at Fort Lewis, WA; then in South Korea; and finally at Fort Hood, TX.

4. The applicant's duty status was changed as follows:

- from Convalescent Leave to AWOL on 13 April 1991
- from AWOL to Dropped from Rolls (DFR) on 13 May 1991
- from DFR to Attached/Present for Duty (PDY) on 18 December 1991 upon being apprehended by civilian authorities and confined for retail fraud. She appeared in court and was sentenced to time served and 2 years of probation
- from Confined by Civil Authorities to PDY on 18 December 1991 when she was returned to military control

5. A DD Form 458 (Charge Sheet) shows on 24 December 1991, court-martial charges were preferred against the applicant for one specification of violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by without authority, being AWOL from on or about 13 April 1991 and remaining so absent until on or about 18 December 1991.

6. On 24 December 1991, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. She consulted with legal counsel and was advised of the basis for the 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. She elected not to submit statement in her own behalf.
7. Her immediate and intermediate commanders recommended approval of her request with a discharge UOTHC.
8. On 16 January 1992, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with her service characterized as UOTHC. He further directed the applicant be reduced to the lowest enlisted grade.
9. Orders and the applicant's DD Form 214 show she was discharged on 26 February 1992, in the rank/grade of private/E-1, under the provisions of AR 635-200, Chapter 10, by reason of "For the Good of Service - In Lieu of Trial by Court-Martial" with separation code "KFS" and reentry code "3." She was credited with completing 3 years and 25 days of net active service this period. She had lost time due to AWOL from 13 April 1991 to 17 December 1991. She did not complete her first full term of service.
10. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived her opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.
11. The applicant provides character reference letters in support of her petition which state:
  - a. The applicant's mother states, in part, the applicant was always a happy, fun-loving person. Having been raised in the Pentecostal Church, she was taught the difference between right and wrong and what was required of her to be honest and productive person. She was kind and respectful and was the one child she could depend on to do the right thing. The applicant enlisted in the Army after completing High School. At the time she felt the military was her best chance at having a skill and a steady job with benefits. At first she sounded like her normal happy self, then she could tell that something had happened to her child but had no idea it was as horrible as she would later learn. It was a good while later when she learned she had been taken advantage of sexually and introduced to drugs by someone who had responsibility for and authority over her. When the applicant returned home in 1991 after having surgery on her leg she was depressed and moody. She was irritable and angry. She complained of either having nightmares, when she did get to sleep or of not being able to sleep. Her

emotions were all over the place, and so was she. She began staying out all night, drinking and using drugs. She was a completely different person than the one she released to the Army. While she was home, their entire family experienced another traumatic event. That being the murder of her baby brother, LFG. The applicant had lost all respect for herself and others; she had no trust in authorities or law enforcement and no longer believed that there were good people or any justice in this world. In 2003, she quit running the streets, and quit drinking and using drugs. She worked hard to get her life on a positive track and is once again the person who enjoys life, as it is. She is kind, considerate and works tirelessly to take care of her loved ones. She believes that if the Army had done right by her daughter, had kept her safe from sexual assault, and had actually provided the service and opportunities they suggested were available to her; she would still be in the military or would have at least made it a career. She had no control over the environment she found herself forced into upon arrival at her duty stations, but the U.S. Army certainly did then and now.

b. The applicant's aunt states, in part, she had always been a happy, laughing, smiling person. When she returned home on leave in 1991, she was distant; appeared distracted; she was irritable; did not seem to have time for anyone; and did not want to be at home. She was jittery, disheveled, and not her normal self. The applicant's mother said she was on drugs and running the streets. This was such a painful time because there was nothing they could do to help her. It broke her heart to see what had happened to her niece. She mentioned briefly that the Army was not what she expected it to be, and she was easily agitated when she tried to ask her what happened. She and the applicant share a lot of confidences with each other. However, they did not speak in detail about what happened to her that caused such a drastic change in her personality and behavior during that time. She had very little contact with her until June 1991 when her brother was shot and killed. She was a total mess and not at all the person that she knew and loved. The applicant just recently informed her that she experienced some very personal offenses, on multiple occasions, that left her afraid to trust anyone, or to report any details of what happened to her while in the Army.

c. A pastor at the applicant's church states she is respectful and willing to help whenever asked. She is a loving mother, a great provider for her children, and helps her mother whenever there is a need.

d. The applicant's uncle, a retired U.S. Air Force chief master sergeant and Vietnam Veteran, states he was recently informed of the horrible experiences she suffered while serving our Country as a Soldier in the Army. He recounts the traumatic events that culminated in her discharge as explained to him by the applicant. He further states, the Army's motto is "Be all you can be." In the applicant's life, the Army (NCOs, supervisors, and leaders) took her opportunity for success and service to the country and turned her life into a disastrous mess! For these reasons, he believes that her discharge should be changed to a under Honorable Conditions (General). Today, the

applicant has regained control of her life, works a full-time job, helps her mother care for grandchildren, and has been clean and sober since April 2003. There is no doubt that the men who were supposed to train and equip our young Soldiers with knowledge and skills to protect our freedoms failed in this case and nearly destroyed a young person's life. He is asking the Board to take this opportunity to make amends for the wrongful acts committed against her.

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

13. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a discharge upgrade from Under Other Than Honorable Conditions to Honorable, or to General, Under Honorable Conditions. She indicated that PTSD, Other Mental Health, and Sexual Assault/Harassment conditions were related to her request. Based on her selection of boxes for disability and discharge/separation, it appeared that she was also requesting consideration for medical disability.

2. The ABCMR ROP summarized the applicant's available record and circumstances surrounding the case. Her MOS was Wire System Installer. The applicant was stationed in Korea from 19891027 to 19901026. She sustained injury to her leg and went on convalescent leave and did not return to duty afterward. She was AWOL from 13Apr1991 to 17Dec1991. During that time, she was confined by civilian authority from 22Oct1991 to 18Dec1991 for the charge of retail fraud. She was discharged on 26Feb1992 for the good of the service in lieu of trial by court-martial. Her service was characterized as Under Other Than Honorable Conditions.

3. In her application, the applicant stated she suffered from drug and alcohol addiction and prostitution as a result of being sexually assaulted by two SGTs while in the military. One of the SGTs also introduced her to alcohol and drugs (cocaine). After service, she stated she continued drinking and doing drugs to self-medicate. There were no service treatment records available for review. A mental status evaluation was not available for review. There were no treatment records in JLV either. JLV search revealed the applicant was not service connected for any disability. Personnel Qualification Record prepared 26Mar1991 showed Physical profile PULHES 111111. Based on records available for review, there was insufficient evidence to support the

applicant had a condition which failed medical retention standards of AR 40-501 chapter 3 at the time of separation from service.

4. Concerning the applicant's request for discharge upgrade, the 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered. Although the record did not show a BH diagnosis, under Liberal Consideration, the applicant's self-assertion of PTSD and MST alone is sufficient to merit consideration by the Board for discharge upgrade and change in narrative reason for separation.

#### 5. Kurta Questions

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? As per ARBA policy, the applicant's self-assertion of MST and PTSD is sufficient to affirm its existence; and both are mitigating conditions under Liberal Consideration.

b. Did the condition exist, or did the experience occur during military service? As per ARBA policy, the applicant's self-assertion of MST and PTSD as reported to be due to in-service trauma, is sufficient to affirm existence while in service.

c. Does the condition or experience actually excuse or mitigate the discharge? As per ARBA policy, the applicant's self-assertion of MST and PTSD is sufficient to mitigate the discharge due to AWOL offence. Distrust and opposition to authority, reckless behavior, avoidant behavior, and substance abuse are all sequelae of PTSD.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. 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 his

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 his misconduct.

b. The applicant provides multiple letters, from immediate family members who speak of traumatic events that culminated in her discharge while in the military and change in her behavior after leaving the military. Also, the applicant provides character reference letters from a pastor who speaks of the applicant's character, and a retired U.S. Air Force chief master sergeant and Vietnam Veteran, who describes how the applicant has since regained control of her life, works a full-time job, helps her mother care for grandchildren, and has been clean and sober since April 2003. The Board determined that in view of her lengthy AWOL (8 months), her service clearly did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

c. The Board determined that such upgrade did not change the underlying reason for her separation. The applicant's narrative reason for separation was assigned based on the fact that after she went AWOL and had court-martial charges preferred against her, she chose to be discharged under chapter 10 in lieu of trial by a court-martial. If she had not gone AWOL, there would have been no reason to prefer court-martial charges against her. The underlying reason for her discharge was her AWOL and subsequent voluntary request for discharge in lieu of the court-martial. The only valid narrative reason for separation permitted under chapter 10 is "In Lieu of trial by a court-martial" and the appropriate separation code associated with this discharge is KFS.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

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:            :            :            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 amending the applicant's DD Form 214 for the period ending 26 February 1992, showing:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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 changing the narrative reason for separation.

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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 three 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 three-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. 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 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.

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

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give 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.

7. 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, 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//