

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008534

APPLICANT REQUESTS:

- Reconsideration of her previous request for upgrade of her bad conduct discharge (BCD)
- amendment of the separation authority to MPM [The Navy Military Personnel Manual] 1910-164, the narrative reason for separation to Secretarial Authority and separation code to JFF.

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief
- Exhibit 1-Entrance Examination
- Exhibit 2-Military Personnel Record and Periodic Medical Examination
- Exhibit 3-Article Written by Commander B__
- Exhibit 4-Special Court Martial Transcript
- Exhibit 5-Service Treatment Records
- Exhibit 6-Exit Examination
- Exhibit 7-Post Service Treatment Records and Veterans Administration (VA) Compensation and Pension Examination
- Exhibit 8-Department of Veterans Administration (DVA) Letters

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 AR20200001466 on 13 July 2021.
2. The applicant lists post-traumatic stress disorder (PTSD), other mental health and sexual assault/harassment as related to her request.
3. Counsel states, although the applicant went along with the advice of her defense counsel to enter into a plea deal in order to avoid more severe punishment, she has consistently maintained her innocence since her discharge from the military. Even if she

threatened Commander B__ in an effort to stop the targeting and harassment, she should have been offered a rehabilitative transfer instead of the overly harsh punishment she ultimately received. Thus, under the totality of circumstances, the applicant deserves discharge relief. The applicant suffered from a severe mental health condition during her military service that excuses and mitigates the conduct that led to her discharge. She was the unfortunate target of Commander B__ and she consequently struggled to manage her mental health. Instead of offering any type of real leadership or rehabilitation, Commander B__ let her biases take over as she worked to systematically discharge the applicant from the military. At no point did her action warrant such treatment. For the reasons outlined in this brief and supported by the substantial new relevant evidence, the applicant respectfully requests upgrade.

4. The applicant enlisted in the Regular Army on 30 June 1981 for three years. Her military occupational specialty was (MOS) 71L (Administrative Specialist).
5. The applicant served in Korea from 18 April 1983 through 16 February 1984.
6. The applicant accepted non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), on 23 November 1983 for failing to be at her prescribed place of duty on or about 3 November 1983 (on two occasions). Her punishment consisted of reduction to private first class/E-3, forfeiture of one-fourth months' pay (suspended), restriction and extra duty.
7. On 8 December 1983, the applicant's suspended punishment was vacated for failure to be at her appointed place of duty on or about 26 November 1983 and 5 December 1983.
8. A Report of Mental Status Evaluation, dated 10 February 1984, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements.
9. The applicant underwent a separation examination on 10 February 1984. The Report of Medical Examination notes at 42 – Psychiatric - borderline personality deficit.
10. The applicant's DA Form 2-1 (Personnel Qualification Form), shows in item 21 (Time Lost) – imprisonment from 16 February 1984 to 24 May 1984.
11. A DA Form 268 (Report for Suspension of Favorable Personnel Actions), dated 17 February 1984, shows the applicant was pending trial by court-martial for assault upon a commissioned officer, lifting a weapon against a commissioned officer, and communicating a threat. The applicant was in pre-trial confinement.

12. Before a special court martial at Yongson, Korea on 27 March 1984, the applicant was convicted of Charge I and Specification 1, offering violence against her superior commissioned officer, who was then in the execution of her office, by drawing a utility knife and saying to the said Captain, "I am going to slit your throat," or words to that effect on or about 16 February 1984.
13. The court sentenced her to be confinement at hard labor for 4 months, forfeiture of \$397.00 pay per month for 4 months, reduction to private/E-1 and to be discharged with a BCD. The sentence was approved on 27 March 1984. The record of trial was forwarded to the Court of Military Review.
14. The Statement of Medical Option, dated 18 May 1984 shows the applicant did not desire a separation medical examination. Additionally, a Report of Mental Status Evaluation, dated 23 May 1984 shows the applicant had the mental capacity to understand and participate in the proceedings.
15. On 23 May 1984, the applicant's chain of command recommended that she be placed in an involuntary excess leave status.
16. The applicant's duty status was changed from confined by military authority to present for duty to excess leave on 25 May 1984, while pending appellate review.
17. The Statement of Exemption, dated 25 May 1984 shows the applicant waived a medical examination in conjunction with separation.
18. The U.S. Army Court of Military Review affirmed the findings of guilty and the sentence on 12 June 1984.
19. Special Court-Martial Order Number 371, dated 4 September 1984, issued by Headquarters, U.S. Army Correctional Facility, Fort Riley, shows the finding of guilty and the sentence had been affirmed, Article 17(c) had been complied with, and the sentence would be duly executed.
20. The applicant was discharged on 25 September 1984. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 3, as a result of court martial with Separation Code JJD and Reenlistment Code 4. Her service was characterized as bad conduct. She completed 2 years, 11 months, and 17 days of net active service. She had lost time from 16 February 1984 to 24 May 1984. She was awarded the Army Service Ribbon and the Overseas Service Ribbon.

21. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. The ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed. Her reduction was a result of the court-martial conviction.

22. The applicant provides:

- a. Exhibit 1-Entrance Examination partial.
- b. Exhibit 2-Military Personnel Record and Periodic Medical Examination shows qualified for service.
- c. Exhibit 3-Article written by Commander B__ regarding The Army and Pregnancy.
- d. Exhibit 4-Special Court Martial transcript. Special Court Martial discussed above.
- e. Exhibit 5-Service treatment records show various treatment and diagnoses.
- f. Exhibit 6-Exit Examination discussed above.
- g. Exhibit 7-Post Service Treatment Records shows diagnoses of bipolar disorder, current episode mixed, moderate, cocaine, dependence, in remission, alcohol dependence, in remission, panic disorder, and PTSD. VA Compensation and Pension Examination shows the applicant's PTSD is characterized by symptoms including depression, anxiety, suspiciousness, panic attacks more than 1x/week, chronic sleep impairment, memory deficits, flattened affect, impaired judgement, changes in mood and motivation, difficulty dealing with stress and stressful situations, difficulty managing social and occupational relationships, difficulty sustaining intimate relationships, impaired impulse control/lashing out in anger, nightmares and night terrors, flashbacks/re-experiencing events, intrusive memories, hyper startle response, hypervigilance, and avoidance behaviors.
- h. Exhibit 8- DVA letters, dated 22 January 2022 shows the applicant's discharge for service from 30 June 1981 to 25 September 1984 remains bad conduct, however, is now considered honorable for VA purposes and is not a bar to VA benefits. DVA letter dated 30 September 2022 shows service connection for PTSD was granted with an evaluation of 70%.

23. On 27 June 2011, ARBA notified the applicant that her application was unclear as to the specific correction she desired the ABCMR to take on her behalf.

24. On 13 July 2021, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the applicant's records. A Medical Review was done in the processing of this application.

25. On 5 September 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 regarding Sexual Assault pertaining to the applicant.

26. 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.

27. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request for an upgrade of her bad conduct discharge (BCD) as well as amendment of the narrative reason for separation to Secretarial Authority and separation code to JFF. She contends MST, racial harassment, and OMH 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 30 June 1981.
- Applicant served in Korea from 18 April 1983 through 16 February 1984.
- Applicant accepted non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), on 23 November 1983 for failing to be at her prescribed place of duty on or about 3 November 1983 (on two occasions).
- On 8 December 1983, the applicant's suspended punishment was vacated for failure to be at her appointed place of duty on or about 26 November 1983 and 5 December 1983.
- Before a special court martial at Yongson, Korea on 27 March 1984, the applicant was convicted of offering violence against her superior commissioned officer, who was then in the execution of her office, by drawing a utility knife and saying to the said Captain, "I am going to slit your throat," or words to that effect on or about 16 February 1984. The court sentenced her to confinement at hard labor for 4 months, forfeiture of \$397.00 pay per month for 4 months, reduction to private/E-1 and to be discharged with a BCD.
- Applicant was discharged on 25 September 1984. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted

Personnel), Chapter 3, as a result of court martial with Separation Code JJD and Reenlistment Code 4. Her service was characterized as bad conduct.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed include the applicant's completed DD Form 149, DD Form 214, attorney brief, ABCMR Record of Proceedings (ROP), prior ABCMR Record of Proceedings, and documents from her service record and separation. 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's counsel states, although the applicant went along with the advice of her defense counsel to enter into a plea deal in order to avoid more severe punishment, she has consistently maintained her innocence since her discharge from the military. Even if she threatened Commander B__ in an effort to stop the targeting and harassment, she should have been offered a rehabilitative transfer instead of the overly harsh punishment she ultimately received. Thus, under the totality of circumstances, the applicant deserves discharge relief. The applicant suffered from a severe mental health condition during her military service that excuses and mitigates the conduct that led to her discharge. She was the unfortunate target of Commander B__ and she consequently struggled to manage her mental health. Instead of offering any type of real leadership or rehabilitation, Commander B__ let her biases take over as she worked to systematically discharge the applicant from the military. At no point did her action warrant such treatment. For the reasons outlined in this brief and supported by the substantial new relevant evidence, the applicant respectfully requests upgrade.

e. Due to the time of service, active-duty electronic medical records were not available for review. However, the applicant provided hardcopy documentation indicating she underwent a separation examination on 10 February 1984, the applicant endorsed symptoms of anxiety, depression, disrupted sleep, memory issues, and periods of unconsciousness. A Mental Status Evaluation, dated 10 February 1984, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements. However, the report notes borderline personality deficit. Applicant's counsel further provided testimony from service members during the applicant's court martial proceedings supporting the applicant's assertion of racial harassment. In addition, consistent with the applicant's account, no prior issues with misconduct were evident in her service record until she had a change in command over two years into her time in service. Although the allegations of brandishing a weapon will not be challenged, counsel submits information that the box cutter the applicant allegedly displayed when she threatened the commander was never found and the incident occurred in a private office with no witnesses.

f. The applicant is 70% service-connected for MST-related PTSD. Her VA electronic medical record indicates she initiated services with the VA in 2017 and has receive behavioral health services via a civilian provider. A C and P Examination dated 5 May 2022 diagnosed the applicant with Post-Traumatic Stress Disorder and Unspecified Bipolar and Related Disorder. The examination notes a history of homelessness and psychiatric hospitalizations. In addition, the examination document's the applicant's report that she was "taken to prison on base in South Korea a after being accused of threatening her commander (which she denied). After she got there, two male guards stripped, raped, and sodomized her. She said that she was "beaten and stripped and raped on a daily basis."

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant experienced racial harassment, MST, and a subsequent behavioral health condition during military service. However, the applicant's experience and subsequent behavioral health condition does not provide mitigation of her misconduct.

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 racial harassment and MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected for MST-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge due to offering violence against her superior commissioned officer, who was then in the execution of her office, by drawing a utility knife and saying to the said Captain, "I am going to slit your throat," or words to that effect on or about 16 February 1984. Per the applicant, her commanding officer reportedly engaged in a barrage of discriminating insults, degrading/shaming exclamations (sometimes with others present) and career-ending threats that more likely than not fostered trauma related symptoms even prior to the MST's she reported during her military incarceration. A review of her Army career indicates a dramatic change in the applicant's motivation, temperament and level of instability. Such a radical change in behavior is consistent with the behavioral changes seen in soldiers who develop trauma related symptoms in a noncombat environment and is consistent with her reported racially based harassment. However, her act of wielding a weapon to potentially use against her commander is not part of the natural history or sequelae of trauma related symptoms/MST and, as such, is not mitigated.

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.

a. Discharge Upgrade: Deny. The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (offering violence). Her conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which she was convicted. She was given a bad conduct discharge pursuant to an approved sentence of a special court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in the separation processing. The Board also considered and agreed with the medical reviewer's finding that although there is evidence the applicant experienced racial harassment, MST, and a subsequent behavioral health condition during military service; however, her experience and subsequent behavioral health condition does not provide mitigation of her misconduct. Additionally, the applicant does not provide sufficient 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.

b. Narrative Reason for Separation: Deny. The applicant violated the UCMJ, and she was tried and found guilty by a special court-martial of her violations. The reason for her separation was her conviction by a court-martial. The only valid narrative reason or separation is "court-martial" and the appropriate Separation Code associated with such discharge is JJD. Based on a preponderance of evidence, the Board determined that the narrative reason for separation and associated Separation Code the applicant received upon separation were not in error or unjust.

c. Amendment of the separation authority to MPM [The Navy Military Personnel Manual] 1910-164. This request is unclear. The applicant was separated by authority of AR 635-200 (Personnel Separations-Enlisted Personnel), Chapter 3, as a result of court martial. This authority is correctly listed on her DD Form 214 and there is no reason to change it.

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. Regarding the discharge upgrade, 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 to amend the decision of the ABCMR set forth in Docket Number AR20200001466 on 13 July 2021.
2. Regarding the Authority for Discharge, Narrative Reason for Separation, and Separation Code, 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, U.S. Code (USC), Section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather,

it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six standard characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

b. Block 25 (Separation Authority), enter the regulatory or other authority cited in the directives authorizing the separation.

c. Block 26 (Separation Code) enter the proper SPD representing the specific authority for separation (AR 635-5-1 provides the authorities, reason, and applicable SPD's), and narrative reason for separation will be entered as provided in Army Regulation 635-5-1.

d. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

6. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD "JJD" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 3, by court-martial.

7. 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.

8. 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//