

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230008581

APPLICANT REQUESTS:

- upgrade of her character of service from uncharacterized to honorable and a favorable change of her narrative reason for separation
- removal of derogatory statements from her military records
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge)
- Request for Assistance to Honorable A____, with Agency response letter
- Self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Bachelor of Science Degree
- Privacy Release Form
- Various images of personal identification
- Character Reference Letter

FACTS:

1. The applicant did not file within the three-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 suffered sexual abuse while at basic training. Her narrative reason for discharge is untrue and unjust. Her character and her good name mean everything to her. Statements about her character, immaturity, and various other statements should be removed from her military records. If she hadn't been sexually harassed and abused, she would have been able to successfully complete training. She was not protected, and the offender should have never been allowed in the Army.

3. The applicant enlisted in the Regular Army on 4 October 2010, for 3 years and 19 weeks. Her record shows she was not awarded a military occupational specialty.
4. On 2 November 2010, the applicant underwent a mental status evaluation. The attending psychologist diagnosed her with acute stress reaction. However, she was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
5. The applicant's immediate commander notified her on 4 November 2010, that he was initiating actions to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's diagnosis of acute stress reaction, and noted that she was not currently adapting at a successful rate.
6. On the same date, the applicant acknowledged receipt of the proposed separation action. She waived her right to consult with counsel and elected not to make any statements in her own behalf. She declined a separation physical. She acknowledged she had not been a victim of sexual assault for which an unrestricted report was filed within the past 24 months.
7. The applicant's immediate commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 11.
8. The separation authority approved the proposed separation action on 5 November 2010, and directed her separation from the Army prior to the expiration of her current term of service, for entry level performance and conduct with uncharacterized service.
9. The applicant was discharged on 17 November 2010, in the rank/grade of private first class/E-3. She was credited with 1 month and 14 days of net active service this period. Her DD Form 214 contains the following entries in:
 - Item 24 (Character of Service) – Uncharacterized
 - item 25 (Separation Authority) – AR [Army Regulation] 635-200, Chapter 11
 - item 26 (Separation Code) – JGA
 - item 27 (Reentry Code) – RE-3
 - item 28 (Narrative Reason for Separation) – Entry Level Performance and Conduct
10. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. 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.

11. The applicant petitioned the ABCMR requesting favorable change to her reentry eligibility code. On 20 December 2011, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of her records.

12. The applicant petitioned the Army Discharge Review Board requesting upgrade of her uncharacterized discharge. On 18 January 2013, the Board voted to deny relief and determined her discharge was both proper and equitable.

13. The applicant provides the following (provided in entirety for the Board):

a. Bachelor of Science Degree highlighting her post service educational accomplishments.

b. Character reference letter from her mother, detailing the impact and change to her mental health following her discharge from the Army.

14. 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.

MEDICAL REVIEW:

1. The applicant requests upgrade of her Uncharacterized discharge to Honorable and a change to her narrative reason for separation. She contends her separation was related to sexual abuse.

2. 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 4 October 2010; 2) On 2 November 2010, the applicant underwent a mental status evaluation. The attending psychologist diagnosed her with acute stress reaction. She was also psychiatrically cleared to participate in any administrative action deemed appropriate by the command; 3) On the same date, the applicant acknowledged receipt of the proposed separation action. She waived her right to consult with counsel and elected not to make any statements in her own behalf. She declined a separation physical. She acknowledged she had not been a victim of sexual assault for which an unrestricted report was filed within the past 24 months; 4) The separation authority approved the proposed separation action on 5 November 2010, and directed her separation from the Army prior to the expiration of her

current term of service, for entry level performance and conduct with uncharacterized service. The applicant was discharged on 17 November 2010, accordingly.

3. The electronic military medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant's initial BH-related engagement occurred on 2 November 2010 whereby the applicant was escorted by her DS with complaints of depressed mood, anhedonia, concentration problems, decreased self-esteem, problems adjusting, decreased motivation to train, peer conflict and making threatening remarks to self-harm if not allowed to go home. She stated that she made a mistake by joining the Army at the time and that she was not emotionally ready to become a Soldier. She reported a pre-service history of BH treatment for depression, on and on, for four years, and noted her current symptoms had onset approximately 3-weeks ago. The attending provider diagnosed her with Acute Stress Reaction and cleared her for any administrative discharge deemed appropriate by command. Records show the applicant also attended Stress Inoculation Training Group, on 2 November 2010, whereby she was oriented to the clinic and received instruction on stress reduction techniques. AHLTA was void of any additional BH treatment encounters for the applicant. Included in the applicant's casefile was her previous boarded case (AR20110013469) in which she shared that her concerning experience during BCT centered on her mother's declining health and struggling for her life. There was not mention in the case of sexual abuse. A review of JLV was void of any BH treatment history and the applicant does not have a SC disability. No civilian BH records were provided for review.

4. The applicant requests upgrade her Uncharacterized discharge to Honorable and a change to her narrative reason for separation. She contends separation was related to sexual abuse. A review of the records shows the applicant with an in-service diagnosis of Acute Stress Reaction that was rendered during a Command Directed Evaluation. On the day of the evaluation the applicant also attended an orientation group. In-service records were void and any additional BH engagement. Post-service records were void of any BH treatment history. Included in the casefiles was the applicant's previous boarded case (AR20110013469), during which the applicant asserts her concerning experience during BCT centered on her mother's failing health and struggling for her life. There was no mention of sexual abuse during the case. Also included in the casefile was the applicant's signed Acknowledgement Notification of Proposed Separation, whereby she attested that she had not been the victim of a sexual assault for which an unrestricted reported had been filed in the past 24-months. In absence of additional evidence supporting the applicant's assertion of sexual abuse, there is insufficient evidence to establish her discharge was related to or mitigated by sexual abuse. Finally, the applicant diagnosis of Acute Stress Reaction would not preclude administrative separation IAW AR 635-200, Chapter 11.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant experienced sexual abuse during her time in service. However, she contends her separation was related to sexual abuse, and per liberal guidance, her contention is sufficient to warrant the Board's consideration.

6. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends her separation was related to sexual abuse.

b. Did the condition exist or experience occur during military service? Yes.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records shows the applicant with an in-service diagnosis of Acute Stress Reaction that was rendered during a Command Directed Evaluation. On the day of the evaluation the applicant also attended an orientation group. In-service records were void and any additional BH engagement. Post-service records were void of any BH treatment history. Included in the casefiles was the applicant's previous boarded case (AR20110013469), during which the applicant asserts her concerning experience during BCT centered on her mother's failing health and struggling for her life. There was not mention of sexual abuse during the case. Also included in the casefile was the applicant's signed Acknowledgement Notification of Proposed Separation, whereby she attested that she had not been the victim of a sexual assault for which an unrestricted reported had been filed in the past 24-months. In absence of additional evidence supporting the applicant's assertion of sexual abuse, there is insufficient evidence to establish her discharge was related to or mitigated by sexual abuse. Finally, the applicant diagnosis of Acute Stress Reaction would not preclude administrative separation IAW AR 635-200, Chapter 11.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, her military record, and the statutory and regulatory guidance. After reviewing the application, the medical advisory opinion, all her supporting documents, and the evidence found within her military record, the Board found relief was not warranted.

2. The evidence of record and independent evidence provided by the applicant 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.

3. The Board carefully considered the applicant's request to upgrade her characterization of service and narrative reason for separation based on her contention that her separation was related to sexual abuse.

a. The ARBA medical advisor rendered a medical opinion outlining the 3 critical Kurta questions. The answer to the first two critical Kurta questions is yes, but the answer to the third Kurta question is, no. The medical advisor concluded, "In absence of additional evidence supporting the applicant's assertion of sexual abuse, there is insufficient evidence to establish her discharge was related to or mitigated by sexual abuse. Finally, the applicant diagnosis of Acute Stress Reaction would not preclude administrative separation IAW AR 635-200, Chapter 11."

b. The applicant provided a heartfelt letter, but there is no evidence of irregularity or impropriety in the discharge, receiving uncharacterized is common for entry level separation and according to the medical advisory there is no documentation or record of MST annotated anywhere.

d. the Board determined the applicant's characterization of service and narrative reason for separation were appropriate.

4. The Board reviewed the available military record and was unable to find anything that meeting the definition of derogatory information, as such, no action is required.

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.

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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. Section 1556 of Title 10, U.S. Code, 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.

2. 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.

a. Paragraph 2-9 states 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.

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.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official military personnel files (OMPF); ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual OMPF's; and ensure that the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from the OMPF. It states unfavorable information that should be filed in the OMPF includes indications of substandard leadership ability, promotion potential, morals, and integrity.

a. Once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority.

b. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the OMPF. Normally, such appeals will be considered only from Soldiers in grades E-6 and above, officers, and warrant officers. Such documents may be appealed on the basis of proof that their intended purpose has

been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for entry level performance and conduct.

5. Army Regulation 635-200 sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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. 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.

d. 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 their character of service to be rated as honorable or otherwise.

//NOTHING FOLLOWS//