

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008690

APPLICANT REQUESTS:

- upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable.
- a hearing before the Board via video, telephone, or in person

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

- DD Form 149 (Application for Correction of Military Record)
- buddy statement from Major M.M., 11 September 2021
- medical records and consultation report, 20 January 2021
- letter to Department of Veterans Affairs (VA), 18 December 2021
- additional information for VA, undated
- VA problem list, 3 February 2023
- letter to VA, 12 May 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 was sexually assaulted by her quartermaster (QM) officer basic course (OBC) instructor and his wife in on-post lodging. She reported the incident, attempted suicide, was admitted, and withdrawn from a psychiatric hospital. She was placed on psychiatric medications while still on active duty under her QM OBC instructor's command. She had suicidal and homicidal thoughts. She saw her face in every male Soldier and wanted to kill every male Soldier. She begged for help and reassignment but was told to "suck it up or resign," so she resigned "for the good of the service." Their lives meant more to her than her military career, so she quit. He won, and there was nothing she could do about it.

3. The applicant enlisted in the Regular Army on 31 August 2000, for 4 years. She was honorably released from active duty on 8 October 2001. She completed 1 year, 1 month, and 8 days of net active service during the period covered.
4. On 15 May 2002, the applicant enlisted into the U.S. Army Reserve (USAR) for a period of 8 years. She entered the Reserve Officers' Training Corps program as a cadet at Fordham University, Bronx, NY.
5. On 3 May 2004, she was appointed as a Reserve Commissioned Officer of the Army in the rank/grade of second lieutenant (2LT)/O-1 in the QM Corps.
6. A DA Form 1059 (Service School Academic Evaluation Report), dated 30 August 2005, shows she was a student at the QM OBC, Fort Lee, VA, but was administratively relieved from the course due to medical reasons.
7. Orders 05-326-00008, issued by Headquarters, U.S. Army Reserve Command, Fort McPherson, GA, show effective 22 November 2005 by direction of the Secretary of the Army, the applicant was released and deleted from the USAR strength and attached to Company E, U.S. Army QM School, Fort Lee, VA.
8. The applicant was reported absent from on or about 23 October to on or about 29 November 2005.
9. Orders 336-22, issued by Headquarters, U.S. Army Personnel Control Facility, U.S. Army Armor Center, Fort Knox, KY, show she was attached to the Joint Special Processing Company, Fort Knox, KY, after she surrendered to military authorities in Fort Hamilton, NY on 29 November 2005.
10. On 21 December 2005, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial and the procedures and rights that were available to her.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily tendered her resignation from the Army under the provisions of Army Regulation (AR) 600-8-24 (Personnel-General-Officer Transfers and Discharges), Chapter 3 (Resignations), paragraph 3-13, resignation for the good of the service in lieu of general court-martial. She understood that if her resignation was accepted it would be UOTHC.
 - b. She elected to waive her right to submit matters of explanation, mitigation, or defense in her case, and elected to remain silent.
11. The applicant's chain of command recommended two to one for approval of the applicant's request for resignation and the issuance of a UOTHC discharge.

12. The complete facts and circumstances surrounding her resignation approval is not available for review. However, her record contains a dully constituted DD Form 214 (Certificate of Release or Discharge from Active Duty) that shows the following:

a. On 27 February 2006, the applicant was discharged under the provisions of Army Regulation 600-8-24, paragraph 3-13, by reason of in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of O-1. She was issued a separation code of "DFS" and reentry code of "NA [Not Applicable]."

b. She completed 7 months and 24 days of net active service during the period covered.

c. Block 18 (Remarks) the entry "MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE."

d. Block 29 (Dates of Time Lost During This Period) the entries:

- 20050829 – 20050903
- 20051023 – 20051129

13. The applicant provides the following documents which are available in their entirety for the Board's review within the supporting documents:

a. A buddy statement from Major M.M. stating:

(1) He met the applicant when they both attended the QM OBC in 2005. The class leader/instructor was Captain (CPT) S__. Initially, the applicant performed well. However, CPT S__'s interest in the applicant was noticeable, and after the Memorial Day weekend, CPT S__'s and the applicant's behavior changed. The applicant was on medication and was often late to formations, and CPT S__'s interest in her increased. Inappropriate comments were made in class, and CPT S__ stayed at the lodge where all the junior officers stayed. On the night in question, the applicant told him CPT S__ and his wife were in her room and were inappropriate with her. He told the applicant to report the misconduct, and to his knowledge, she did.

(2) The applicant began to act out after reporting the behavior, and no action was taken to remove her from a hostile environment. He noticed changes in the applicant's behavior, such as missed formations, outbursts among peers, refusal to participate in weapons range, days where she refused to leave her room, and finally, going absent without leave (AWOL) for 29-30 days. The author talked to her over the phone when she was AWOL and begged her to come back, but she said she was going to hurt someone or hurt herself if she did. She told the author she felt threatened and that the command was out to get her, but the applicant would not tell him why.

(3) After graduating from QM OBC, he and the applicant stayed in touch and have been friends for the last 16 years. Last summer, she confided in him and told him that CPT S__ had sexually assaulted her. He immediately told her to report it to the Sexual Harassment/Assault Response and Prevention/Sexual Assault Response Coordinator at Fort Lee. His most profound regret is that he lacked the training and necessary skills as a 2LT to recognize the signs of a victim. He now knows she went AWOL out of fear for her safety. She cried out for help and was shunned and punished by the command. The command was so fearful that they offered her the opportunity to graduate without completing the rest of the QM OBC.

(4) Today, she would have had a lot of support, including a victim's advocate, chaplain's assistance, immediate removal from the unit, and a special victim advocate; however, 16 years ago, she was forced to retreat to her room, miss formations, be medicated, and go AWOL to prevent herself from being re-victimized. In Major M.M.'s opinion, the applicant was unjustly separated from the Army, should be immediately upgraded to an honorable discharge, and should be given any victim compensation available to veterans discharged under military sexual trauma (MST).

b. Medical records showing a list of active and discontinued psychiatric medications she was prescribed from July 2005 to December 2005 and a consultation for hospitalization and provisional diagnosis of major depressive disorder by the Health Care provider on 5 April 2006.

c. A VA problem list, last updated on 3 February 2023, showing the applicant was diagnosed with chronic PTSD and moderate recurrent major depression effective 30 March 2021.

d. Two letters and a two-page additional information document submitted to the VA by the applicant in support of her request for medical benefits, detailing her sexual assault claims against CPT S__ and his wife; her experience after the assault, including mistreatment by her command, attempted suicide, hospitalization due to a psychotic break and AWOL; psychiatric medications prescribed and behavioral health issues she suffers from as a result of her claimed sexual assault.

14. On 2 November 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 pertaining to the applicant.

15. Regulatory guidance in effect at the time provided a characterization of service of UOTHC was normally considered appropriate for officers discharged under the provisions of Army Regulation 635-200, Chapter 3, paragraph 3-13.

15. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents, integrated Personnel Electronic Records Management System (iPERMS), and the applicant's medical records in the Armed Forces Health Longitudinal Technology Application (AHLTA) and Joint Legacy Viewer (JLV) and made the following findings and recommendations: Per liberal consideration, the applicant's assertion of MST is sufficient to establish a MST occurred. If the Board accepts the basis for separation was AWOL, the asserted MST is mitigating; there is a nexus between trauma and avoidance. Accordingly, an characterization upgrade to Honorable with narrative reason of Secretarial Authority is recommended.

b. The applicant was discharged on 27 February 2006 under AR 600-8-24, para 3-13, in lieu of trial by court-martial, with an Under Other Than Honorable characterization. The basis for separation is void. The DD214 lists two periods of lost time; 29 August to 03 September 2005 and 23 October to 29 November 2005. The applicant requests a characterization upgrade to Honorable asserting MST. The applicant reports the MST led to psychiatric crisis and although she requested reassignment, she was told to "suck it up or resign" so she resigned.

c. In June 2005, the applicant started receiving a variety of gynecological services for pregnancy prevention, STDs, and other related issues. She received care through October. The medication lists includes a variety of psychiatric medications from June to December 2005. Additionally, there is a consult for psychiatric hospitalization for depression and suicidal ideation.

d. The applicant is not service connected within the eligibility module, but notes indicate she is authorized care for MST related conditions. In October 2020, the applicant called the crisis line reporting MST and need for care. She attended an intake noting the news around SM Guillen reminded her of her MST by a CPT in 2005. She reported she was discharged from going AWOL secondary to the MST and distress. She reported post-service history of Intimate Partner Violence (IPV) perpetration and victimization with ongoing custody case and legal charges due to shooting her husband in the leg. She reported prior arrests for threatening via social medial and bullying were expunged. She was diagnosed with PTSD due to MST, Depressive Disorder, and Borderline Personality Disorder. In subsequent sessions, the applicant was focused on getting the VA to pay for ketamine treatment. When informed of logistical challenges and need for further evaluation, she was noted to "insult" and "berate" providers with

calls ended abruptly. In December, psychiatry voiced concern she was on several controlled substances, some of which would counteract each other (Adderall and Klonopin), with extended history of Ketamine use which itself can create addiction and not recommended for long-term use. The provider opined a need for a more thorough and substantiated history of medications, failed treatment, etc before considering Ketamine. She was also recommended for ADHD testing, but VA records are void of psychological testing to affirm the diagnosis.

e. In January 2021, the applicant reported the VA's pushback on her requests was just a reiteration of people not caring or doing their job. She noted she was also frustrated as she'd not heard back from her MST perpetrator's current employer; she'd mailed a letter to the employer informing they he was a MST perpetrator. In March, Ketamine treatment was declined as it was not FDA approved for PTSD, but a related nasal medication was authorized. When the applicant was informed the drug was not approved for PTSD, she asserted she didn't have PTSD. The Patient Advocate attempted to discuss the denial and diagnosis, directing her to speak with the diagnosing provider. The applicant started calling everyone incompetent and angry the Patient Advocate wouldn't call the provider and rectify the situation. The applicant ended the call abruptly. After which, VA care was sporadic and the applicant reengaged civilian providers.

f. In August 2022, the applicant had a Compensation and Pension (C&P) exam and diagnosed with PTSD due to MST. Shortly after, she enrolled into an intensive PTSD program. In November, she reported her C&P recommendation for service connection was denied. The applicant returned to non-VA care continuing to voice her frustration with the VA denying her preferred medication and C&P outcome.

g. In July 2023, she called the MST coordinator requesting a primary care provider. The MST coordinator informed her they could not do that but could arrange other MST related care for her. She again engaged in inappropriate behavior with the staff member. The applicant continues with non-VA care.

Kurta Questions:

(1) Does the applicant have a condition or experience that may excuse or mitigate the discharge? YES. The applicant experienced MST.

(2) Did the condition exist or experience occur during military service? YES. The applicant experienced MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? YES. Based on liberal consideration and the nexus between trauma and avoidance, the basis for separation is mitigated.

(4) Does the condition or experience outweigh the discharge? YES. MST outweighs avoidance related misconduct.

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 partially warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The complete facts and circumstances surrounding the applicant's separation processing are not available for review. However, her DD Form 214 shows she was discharged under the provisions of AR 600-8-24, in lieu of trial by court-martial, with an under other than honorable conditions characterization of service. She completed 7 months and 24 days of active service, and she had two periods of lost time. In the absence of evidence to the contrary, the Board presumed no error or injustice in her separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had condition or experience that mitigated and outweighed her misconduct. As a result, the Board determined while an upgrade to honorable characterization of service is not appropriate (given her lost time), however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is appropriate. The Board also determined that such upgrade did not change the underlying reason for her separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

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 27 February 2006, 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 upgrading the characterization of his discharge to honorable.

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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, U.S. Code, 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, U.S. Code, 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.
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. 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.
4. Army Regulation 600-8-24, in effect at the time prescribed policy and procedure governing transfer and discharge of Army officer personnel.
 - a. Paragraph 1-16 states an officer pending court-martial charges or investigation with a review toward court-martial will not be separated without Headquarters, Department of the Army approval.
 - b. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.
 - c. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - d. Chapter 3 (Resignations) of the regulation prescribes the tasks, rules, and steps for processing voluntary resignations). Paragraph 3-13 (Rules for processing resignation for the good of the service in lieu of general court-martial) states an officer may submit a resignation for the good of the service in lieu of general court-martial if

court-martial charges have been preferred against the officer with a view toward trial by general court-martial. An officer separated under this paragraph normally receives characterization of service of under other than honorable conditions. An officer who resigns for the good of the service (regardless of the character of service received) is barred from rights under laws administered by the Veterans Affairs based on the period of service from which the officer resigned.

5. 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 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.

6. 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 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//