

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230009935

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Two Army Achievement Medal (AAM) Certificates
- DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 13 May 2005
- Psychiatric Progress Notes (28 pages)
- Applicant's Resume
- University Transcripts
- Two Letter of Admission for Graduate School

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:

a. She was deployed to Iraq from 19 April 2003 to 12 April 2004 at the Baghdad International Airport. She was never examined for post-traumatic stress disorder (PTSD) following her return from deployment. It was hard readjusting when she returned and upon arriving at Fort Bragg, NC, she spiraled out of control. She used illegal drugs to self-medicate and it took years for her to be honest with herself about PTSD. She still has nightmares multiple nights a week, even after 19 years and she does not celebrate 4th of July because the fireworks remind her of rocket propelled grenades (RPG). She finally agreed to get help last year and was diagnosed with

PTSD. She has not used cocaine in over 17 years and is currently prescribed medication to assist with her challenges.

b. She now recognizes that she should have asked for help following her panic attack in the middle of Wal-Mart or when she jumped on the floor behind the couch when someone slammed the barracks door. She was extremely fearful she would die alone during her time in Iraq, but never spoke to anyone about that fear. She describes multiple events that fueled her fear to include having to hide under a desk after the building shook following an attack, another mortar round hitting outside between the tents while she sat in her cot and hearing an RPG attack hit a plane that had just taken off while she unloaded bags. The sound still haunts her and prevents her from celebrating on holidays that include fireworks.

c. There were numerous deaths and injuries from improvised explosive devices (IED). She recalls running off of the road to prevent hitting anything on the road and her panic attacks if she was required to run over the item due to traffic. Her nightmares continue 3-4 days out of the week. She believed she returned from Iraq unharmed; however, the psychological issues and physical issues are present. She recognizes that she should have asked for help instead of self-medicating, but she lied about self-medicating even after being sent to substance abuse classes and continued to self-medicate. It did not help her at the time.

d. She found herself homeless and unemployed following her discharge from the Army. She lost everything including her car, clothes, friends, her teeth, her health, and herself. She has fought hard to get back on track since 2005 and has graduated with honors. She holds a bachelor's degree in computer science and currently working on her master's degree. She has been successful at maintaining employment and is at a point where she can take time off work to take care of herself. She was finally able to seek help for her PTSD and depression which she is now on medication for. She has other ailments that she believes are attributed to the toxic fumes from the burn pits.

e. She is unsure if she is able to get assistance from the Department of Veterans Affairs (VA) due to her discharge, but she always assumed she would be ineligible for benefits. A seminar about the PACT Act armed her with the knowledge to request an upgrade due to her PTSD. She is happy that she finally has an opportunity to request a discharge upgrade.

f. The applicant notes PTSD as an issue/concern related to her request.

3. The applicant provides:

- a. Two AAM certificates, which show the applicant was recognized for two overlapping periods through 30 September 2002 for her performance at the organization.
 - b. An NCO Evaluation Report as the NCO in charge (NCOIC) of the Enlisted Strength/Readiness Section from March 2004 through August 2004 and shows she was rated among the best and senior rated a 1 in overall performance and a 1 in overall potential.
 - c. Psychiatric Progress Notes (28 pages) for her treatment received regarding depression, PTSD, and anxiety, from approximately 7 December 2022 through 24 May 2023.
 - d. The applicant's resume outlines employment she has held in the technical industry following her discharge from the Army from August 2014 through present.
 - e. Her university transcripts, as follows:
 - Austin Community College – Associate of Science, 2018
 - Texas State University – Bachelor of Science, 2021
 - f. Two letters of admission which informed the applicant she had been accepted to graduate school at the University of Texas for advanced studies:
 - 2 November 2021 – Computer Science
 - 3 November 2021 – Data Science
4. A review of the applicant's service record shows:
- a. She enlisted in the Regular Army on 20 March 2000. She held military occupational specialty 42A, Human Resources Specialist. She served in Iraq from 19 April 2003 to 12 April 2004.
 - b. She accepted nonjudicial punishment on 29 November 2004 for one specification of wrongful use of cocaine between on or about 4 November 2004 and 8 November 2004. Her punishment included reduction to the rank of specialist/E-4.
 - c. A DD Form 458 (Charge Sheet) shows on 14 April 2005, court-martial charges were preferred on the applicant for one specification of false official statement to an investigator and one specification of wrongful use of cocaine between on or about 21 February 2005 and 28 February 2005.

d. On 27 April 2005, after consulting with legal counsel she requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. She acknowledged:

- maximum punishment
- she was guilty of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other than honorable conditions
- she would be deprived of many or all Army benefits, she may be ineligible for many or all benefits administered by the Veterans Administration
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she may expect to encounter substantial prejudice in civilian life
- she elected not to submit matters

e. On 4 May 2005, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. She would be separated with an under other than honorable conditions discharge and reduced to the lowest enlisted pay grade.

f. On 13 May 2005, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she was discharged in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10, with an under other than honorable conditions characterization of service. She was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4. She completed 5 years, 1 month, and 24 days of active service with no lost time. It also shows she was awarded or authorized:

- Army Commendation Medal (2nd Award)
- Army Achievement Medal (2nd Award)
- Presidential Unit Citation (Army – Air Force)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Global War on Terrorism Expeditionary Medal
- Noncommissioned Officers Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions discharge. She contends she experienced PTSD that mitigates her misconduct.

b. 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 20 March 2000; 2) The applicant served in Iraq from 19 April 2003-12 April 2004; 3) On 14 April 2005, court-martial charges were preferred on the applicant for one specification of false official statement to an investigator and one specification of wrongful use of cocaine; 4) On 13 May 2005, the applicant was discharged from active duty, Chapter 10- In Lieu of Trial by Court-Martial with an under other than honorable conditions characterization of service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) and civilian medical records provided by the applicant were also examined.

d. The applicant asserts she was experiencing PTSD as a result of her combat deployment to Iraq. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service. A review of JLV was void of medical documentation, and the applicant does not any receive service-connected disability. The applicant provided civilian medical documentation regarding her diagnosis and treatment for depression, PTSD, and anxiety from 7 December 2022- 24 May 2023. There was evidence the applicant reported a history of mental health symptoms consistent with PTSD since her deployment to Iraq. She has been diagnosed with PTSD as a result of the traumatic experiences she reported during her combat deployment to Iraq.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that partially mitigate her misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing PTSD while on active service, and she has been diagnosed with PTSD as a result of her combat deployment by a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she was experiencing PTSD while on active service. She has been diagnosed with PTSD as a result of her combat deployment by a civilian provider.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence that the applicant was experiencing of symptoms of PTSD while on active service. The applicant had one incident of reported substance use during her military service after returning from her deployment. PTSD can be associated with avoidant behavior. The applicant's substance use could be an attempt to self-medicate or to avoid her negative emotional state. Avoidant behaviors are often a natural sequelae to PTSD. However, there is no nexus between the applicant's PTSD and giving false official statement given that: 1) this type of misconduct is not part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. The applicant was charged with commission of an offense (false official statement to an investigator and wrongful use of cocaine) 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 her 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 official's finding sufficient evidence to support the applicant had condition or experience that mitigated her misconduct. The Board determined that in view of her serious misconduct, 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. The Board determined that such upgrade did not change the underlying reason for her separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 13 May 2005, 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

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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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.
3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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 under other than honorable conditions 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.
4. 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, on 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//