

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010433

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- letter, Department of Veterans Affairs (VA), dated 22 May 2023

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 AR2000035973 on 26 April 2000.

2. As a new argument, the applicant states, she was sexually assaulted in boot camp. She has been diagnosed with post-traumatic stress disorder (PTSD), depression, and anxiety as a result. The assault affected her judgement and decisions in a negative manner. She did not tell anyone about the incident until 2019 after she tried to commit suicide because of it.

3. The applicant enlisted in the Regular Army on 6 June 1979 for a 3-year period. Upon completion of initial entry training, she was awarded military occupational specialty 76W (Petroleum Supply Specialist). The highest rank she attained was specialist/E-4.

4. A DA Form 4187 (Personnel Action), dated 4 December 1979, shows the applicant requested her last name be changed from Bxxxxx to Mxxxxx on all official records, following her marriage on 30 November 1979.

5. Three additional DA Forms 4187 show the following changes in the applicant's duty status:

- Present for Duty to Ordinary Leave on 18 March 1981
- Ordinary Leave to Absent without Leave (AWOL) on 1 April 1981
- AWOL to Dropped from Rolls on 1 May 1981

6. The applicant surrendered to civilian authorities on 20 May 1981. She was returned to military control on that same date.
7. The applicant waived a pre-separation medical examination on 21 May 1981.
8. She underwent a mental status evaluation on 22 May 1981. The examining provider determined she had the capacity to understand and participate in administrative proceedings.
9. Court-martial charges were preferred against the applicant on 22 May 1981 for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows she was charged with one specification of AWOL, from on or about 1 April 1981 until on or about 20 May 1981.
10. The applicant consulted with legal counsel on 8 September 22 May 1981.
 - a. She was advised of the basis for the contemplated 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.
 - b. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting discharge, she was admitting guilt to the charges against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making the request free of coercion. She further acknowledged understanding that if the discharge request were approved, she could be deprived of many or all Army benefits, ineligible for many or all benefits administered by the Veterans Administration (VA), and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.
 - c. She was advised she could submit any statements she desired in her own behalf. In an attached statement, the applicant stated, in effect, following her marriage she started having problems. She had three miscarriages. The doctor told her that her body was too weak, and she needed to calm down. Additionally, she had painful bunions and could not wear her boots. She decided it was best to get out because her body was not stable enough for the military, and she would not be able to have a family.
11. On 15 June 1981, the applicant's immediate and intermediate commanders recommended approval of the request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge.

12. The separation authority approved the applicant's request for discharge on 19 June 1981 and directed the issuance of an UOTHC discharge.

13. Accordingly, the applicant was discharged on 13 July 1981, under the provisions of AR 635-200, Chapter 10, by reason of administrative discharge - conduct triable by court-martial. Her DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms her service was characterized as UOTHC, with separation code JFS and reenlistment code RE-3, 3B. She was credited with 1 year, 11 months, and 19 days of net active service, with lost time from 1 April 1981 to 19 May 1981 (49 days).

14. The ABCMR reviewed her request for a discharge upgrade on 26 April 2000. After careful consideration, the Board determined that the applicant failed to submit sufficient evidence to demonstrate the existence of a probable error or injustice. The Board denied her request for relief.

15. On 5 October 2023, in the processing of this case, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Sexual Assault records pertaining to the applicant.

16. The applicant provides a letter from the VA, dated 22 May 2023, which shows the applicant has been diagnosed with and is receiving care for chronic PTSD, moderate recurring major depression, anxiety disorder, and trauma/stressor related disorder.

17. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request for an upgrade of her under other than honorable conditions (UOTHC) characterization of service. She contends MST-related PTSD 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 6 June 1979.
- DA Forms 4187 show the following changes in the applicant's duty status:
- Present for Duty to Ordinary Leave on 18 March 1981
- Ordinary Leave to Absent without Leave (AWOL) on 1 April 1981

- AWOL to Dropped from Rolls on 1 May 1981
- Applicant surrendered to civilian authorities on 20 May 1981. She was returned to military control on the same date.
- Court-martial charges were preferred against the applicant on 22 May 1981 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows she was charged with one specification of AWOL, from on or about 1 April 1981 until on or about 20 May 1981.
- Applicant was discharged on 13 July 1981, under the provisions of AR 635-200, Chapter 10, by reason of administrative discharge - conduct triable by court-martial. Her DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms her service was characterized as UOTHC, with separation code JFS and reenlistment code RE-3, 3B.
- The ABCMR reviewed her request for a discharge upgrade on 26 April 2000. After careful consideration, the Board denied her request for relief.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR), VA medical letter, and documents from her service record and separation packet. 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 states she was sexually assaulted in boot camp. She has been diagnosed with post-traumatic stress disorder (PTSD), depression, and anxiety as a result. The assault affected her judgement and decisions in a negative manner. She did not tell anyone about the incident until 2019 after she tried to commit suicide because of it.

e. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted hardcopy medical documentation from her time in service showing a mental status evaluation dated 22 May 1981. The mental status evaluation indicated the applicant had no significant mental illness or diagnosis, was able to distinguish right from wrong and met medical retention standards. She was psychiatrically cleared for any administrative action deemed appropriate by the command.

f. The VA electronic medical record available for review indicates the applicant is not service-connected, likely due to the characterization of her service. The applicant provides a letter from her VA mental health provider, dated 22 May 2023, indicating the applicant is diagnosed with and receiving care for chronic PTSD, Major Depressive Disorder, Anxiety Disorder, and Trauma-stressor related Disorder. The applicant has

been treated by the VA for chronic PTSD since January 2019. The record further indicates the applicant has struggled with homelessness and has received emergency psychiatric assessments due to suicidal ideation and psychosis. During an intake assessment, on 9 January 2019, the applicant reported that while in service her husband (who had also served in the military), kidnapped and held her hostage for 53 days. During those 53 days, her husband physically/sexually abused and raped her. She was eventually able to escape, and immediately reported it to the police. The applicant reported she was considered AWOL and received an UOTHC discharge. In addition, during a behavioral health encounter on 14 December 2020 she indicated being sexually assaulted by a drill sergeant.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates her discharge.

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 MST-related PTSD mitigates her discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is not service connected but the VA electronic medical record evidences treatment for MST-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes.

The applicant has been treated by the VA for her MST-related PTSD symptoms since 2019. Given the nexus between MST and avoidance, the applicant's incident of AWOL, which resulted in her discharge, are mitigated by her experience of MST and subsequent BH condition. It is relevant to note the medical record appears to indicate the applicant did not willingly AWOL from military service but reported being kidnapped by her husband during that time.

BOARD DISCUSSION:

Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates her discharge.

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 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 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. Additionally, the Board also noted that the applicant's AWOL (47 days) was relatively short when compared to her total service (1 year, 11 month) and her AWOL was terminated by her own surrender, indicating she had no intent on remaining AWOL. Thus, the Board determined that her service did not rise to the level required for an honorable characterization (given her AWOL); 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

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR2000035973 on 26 April 2000. 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 July 1981 to show:

- 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 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

3. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

4. 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, 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//