

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010539

APPLICANT REQUESTS:

- reconsideration of her previous request to have her bad conduct characterization of service upgraded
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statement

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 AR20220005855 on 19 January 2023.

2. The applicant states:

a. While deployed to Iraq from 2009 to 2010, she went home on leave and found a video of her spouse's infidelities that emotionally messed up her mind. While in Iraq, she experienced numerous bombings and casualties which caused her trauma, nightmares, and anxiety. She repeatedly asked for help and never received it.

b. She was a lightweight mechanic and a specialized stryker mechanic. She was highly respected by all officers because she was a good Soldier. Toward the end of her deployment, she received a red cross message concerning the death of her grandfather and she attended the funeral in San Antonio, Texas. During that time, she was mentally unstable, suicidal, and abusing drugs and alcohol. Her and her spouse were separated but he would not stop reaching out to her. When she finally spoke with him, she found out that he had overdosed on pills. This is the same manner in which her mother committed suicide when she was 23 years old. Her spouse begged her not to return to

Iraq and she made the wrong choice not to return. She annotated post-traumatic stress disorder (PTSD) and other mental health as an issue/concern related to her request.

3. The applicant's enlisted in the Regular Army on 29 January 2008.
4. Two DA Forms 4187 (Personnel Action) show her duty status changed from Present for Duty to Absent without Leave (AWOL) on 30 June 2010 and from AWOL to Dropped from Rolls (DFR) on 30 July 2010.
5. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), prepared on 17 August 2010 by the applicant's immediate commander, authorized civil authorities to apprehend the applicant.
6. A DD Form 458 (Charge Sheet), dated 17 August 2010, shows the following charges were preferred:
  - a. Article 86 (AWOL) - In that the applicant did on or about 30 June 2010, without authority and with intent to stay there permanently absent himself [sic] from her unit to wit: FSC, 2-69AR, COS Kalsu, Iraq, and did absent [herself] until on or about 30 July 2010.
  - b. Article 86 (Desertion) - In that the applicant did on or about 30 July 2010, without authority and with intent to permanently absent herself from her unit to wit: FSC, 2-69AR, COS Kalsu, Iraq and did [remain] absent until present.
7. A DD Form 616 (Report of Return of Absentee) shows that civil authorities apprehended the applicant and returned her to military control on 1 November 2010.
8. Special Court-Martial Order Number 6, dated 8 March 2011 shows her sentence, adjudged on 12 January 2011, consisted of reduction to the rank/grade of private (PVT)/E-1, confinement for 5 months, and to be discharged from the service with a bad conduct discharge (BCD). The applicant plead guilty to and was found guilty of the following charges:
  - a. Charge 1, Specification: On or about 30 June 2010, without authority, absented herself from her place of duty at which she was required to be, to wit: an International Airport, and remained absent until she was apprehended on or about 2 November 2010.
  - b. Charge 2, Specification: At or near an International Airport, on or about 30 June 2010, through design missed the movement of the flight with which she was required in the course of duty to move.

9. A DA Form 4187, dated 14 April 2011, shows the applicant's duty status changed from confined by military authorities to present for duty on 9 April 2011.

10. Special Court-Martial Order Number 119, dated 30 August 2011, states the sentence to reduction to the grade of private/E-1, confinement for 4 months, and a bad conduct discharge, adjudged on 12 January 2011 was affirmed. The accused was credited with 10 days of confinement against the sentence to confinement. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with, and the bad conduct discharge will be executed.

11. Orders 290-1311, issued by Headquarters, United States Army Garrison, Fort Sill, discharged the applicant from the Regular Army with an effective date of 21 October 2011.

12. She was discharged in the rank/grade of private/E1, under the provisions of Army Regulation 635-200, chapter 3, by reason of court-martial with a bad conduct discharge characterization of service. She was assigned separation code JJD and reenlistment code 4. She completed 3 years, 1 month, and 23 days of active service. She has lost time from 30 June 2010 to 2 November 2010 and 12 January 2011 to 8 April 2011. She was awarded or authorized the following:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Driver and Mechanic Badge with Driver-Wheeled Vehicle(s) Clasp
- Driver and Mechanic Badge with Mechanic Clasp

13. On 19 January 2023, the applicant applied to the ABCMR and the Board denied the applicant's request to upgrade her discharge to general, under honorable conditions or honorable. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding her misconduct not being mitigated by PTSD. Based on a preponderance of evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

14. On 3 October 2023, Case Management Division sent correspondence to the applicant requesting medical documents that support her request. She was given until 3 November 2023 to provide medical evidence that supported her condition. The applicant failed to respond to the request.

15. 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.

16. By regulation (AR 635-200), a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

#### MEDICAL REVIEW:

1. Background: The applicant is requesting reconsideration of her previous request to upgrade her bad conduct characterization of service. She contends PTSD and OMH mitigates her discharge.

2. 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:

a. Applicant enlisted in the Regular Army on 29 January 2008.

b. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows:

(1) Article 86 (AWOL) - In that the applicant did on or about 30 June 2010, without authority and with intent to stay there permanently absent herself [sic] from her unit to wit: FSC, 2-69AR, COS Kalsu, Iraq, and did absent [herself] until on or about 30 July 2010.

(2) Article 86 (Desertion) - In that the applicant did on or about 30 July 2010, without authority and with intent to permanently absent herself from her unit to wit: FSC, 2-69AR, COS Kalsu, Iraq and did [remain] absent until present.

c. DD Form 616 (Report of Return of Absentee) shows civil authorities apprehended the applicant and returned her to military control on 1 November 2010.

d. Special Court-Martial Order Number 6, dated 8 March 2011 shows her sentence, adjudged on 12 January 2011, consisted of reduction to the rank/grade of private (PVT)/E-1, confinement for 5 months, and to be discharged from the service with a bad conduct discharge (BCD).

e. Applicant was discharged on 21 October 2011, under the provisions of Army Regulation 635-200, chapter 3, by reason of court-martial with a bad conduct discharge characterization of service. She was assigned separation code JJD and reenlistment code 4.

f. On 19 January 2023, the applicant applied to the ABCMR and the Board denied the applicant's request to upgrade her discharge. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding her misconduct not being mitigated by PTSD.

3. 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 293, DD Form 214, ABCMR Record of Proceedings (ROP), self-authored statement, ABCMR Docket Number AR20220005855, 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.

4. The applicant states While deployed to Iraq from 2009 to 2010, she went home on leave and found a video of her spouse's infidelities that emotionally messed up her mind. While in Iraq, she experienced numerous bombings and casualties which caused her trauma, nightmares, and anxiety. She repeatedly asked for help and never received it. She was a lightweight mechanic and a specialized stryker mechanic. She was highly respected by all officers because she was a good Soldier. Toward the end of her deployment, she received a red cross message concerning the death of her grandfather and she attended the funeral in San Antonio, Texas. During that time, she was mentally unstable, suicidal, and abusing drugs and alcohol. Her and her spouse were separated but he would not stop reaching out to her. When she finally spoke with him, she found out that he had overdosed on pills. This is the same manner in which her mother committed suicide when she was 23 years old. Her spouse begged her not to return to Iraq and she made the wrong choice not to return.

5. The active-duty electronic medical record available for review indicates the applicant was command referred to the Army Substance Abuse Program (ASAP) on 15 November 2010 after she was apprehended and returned to military control. The ASAP intake assessment diagnosed the applicant with Alcohol Abuse and Substance (methamphetamine) Use disorder. She was enrolled into an outpatient substance abuse treatment program. On 23 November 2010, the applicant participated in a comprehensive command directed mental health evaluation. Her command was concerned for the applicant and wanted an assessment of her need for additional behavioral health treatment. During that evaluation, the applicant revealed a long history of alcohol and substance abuse beginning in adolescence as well as experiencing

trauma and significant losses prior to her enlistment. She endorsed a history of extensive behavioral health treatment prior to active-duty service. During that assessment, the applicant reported returning home for emergency leave during her deployment to Iraq. She went on to share that her decision to go AWOL was impacted by familial stressors and she did not want to return to her deployment until “she was ready.” The applicant further reported extensive marijuana and methamphetamine use while she was AWOL. During this evaluation, the applicant was thoroughly assessed for PTSD, and she denied her unit received mortars during her deployment but did share being sensitive to sudden noises. She denied any additional symptoms associated with PTSD. The evaluation resulted in a diagnosis of adjustment disorder with depressed mood, she was cleared for administrative action, and was recommended for behavioral health treatment. Contrary to the applicant’s statement that she “repeatedly asked for help and never received it,” she declined to engage in any behavioral health treatment, beyond the command directed substance abuse counseling which she completed in December 2010.

6. No VA electronic medical records were available for review, the applicant is not service connected, and she did not submit any medical documentation post-military service substantiating her assertion of PTSD or OMH. On 3 October 2023, the Case Management Division of ARBA sent correspondence to the applicant requesting medical documentation supporting her contention of PTSD and OMH. The applicant did not provide a response to the request.

7. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates her misconduct. However, per Liberal Consideration guidelines, the applicant’s self-assertion of PTSD and OMH merits consideration by the Board.

8. 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 asserts a mitigating condition.

b. Did the condition exist or experience occur during military service? Yes. There is medical documentation indicating the applicant was diagnosed with an Adjustment Disorder, Alcohol Abuse, and Substance (methamphetamine) Use Disorder.

c. Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition. While in military service, the applicant was diagnosed with an Adjustment Disorder, Alcohol Abuse, and Substance (methamphetamine) Use Disorder. The medical record indicates she consistently reported not returning from emergency leave and remaining AWOL due to familial

stressors and her active drug use. She participated in command directed substance abuse treatment but declined any other behavioral health services while in military service. The applicant was assessed for PTSD, during a command directed mental health evaluation, and she did not meet criteria for the disorder and further declined any mental health services. Overall, the applicant did not provide any medical documentation to substantiate her assertion of PTSD or any BH condition, she is not service-connected, and there is no evidence in the VA electronic medical record indicating she has been treated for PTSD or any other BH condition. And while the applicant's self-asserted PTSD and OMH merits consideration by the Board, per Liberal Consideration guidelines, her sole in service BH condition of adjustment disorder would not mitigate her discharge. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for reconsideration of her previous request to upgrade her bad conduct characterization and her request for personal appearance before the Board, the Board also considered the applicant's contentions, her military record, and the regulatory guidance. After reviewing the application, all supporting documents, and the evidence found within her military record, the Board found relief is 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. There were no medical records available. The Case Management Division requested the applicant provide medical records, but she did not send the requested records. The applicant did not provide evidence in mitigation or to show post service accomplishments.

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 to amend decision of the ABCMR set forth in Docket Number AR20220005855, dated on 19 January 2023.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

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.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. 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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

4. 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.

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 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.

6. 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.

//NOTHING FOLLOWS//