

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010613

APPLICANT REQUESTS: an upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 6 January 2023
- self-authored statement
- complete enlistment contract, 20 pages
- characterization of service checklist
- Permanent Orders 003-31, Driver Badge, 3 January 1997
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 January 1998
- Army Discharge Review Board (ADRB) case, AR20100020834, 4 August 2010
- medication list, 12 April 2017
- certificate of notary
- ordainment identification card
- student identification card

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 having a hard time adjusting to military life, when she received deployment orders. Due to the short suspense of the deployment orders, she was unable to say goodbye to her family and child.

a. While deployed she witnessed mass graves of burning bodies, gunfire battles, loss of life, and she was under constant anxiety about taking fire and improvised explosive devices. She was awarded a medal for diffusing a situation where her squad was about to take fire from the enemy. While being deployed her mental and physical health suffered. When she returned from deployment, she was not offered any

counseling or post deployment assistance, she was suffering from severe depression, anxiety and post-traumatic stress disorder (PTSD).

b. Prior to her deployment, her time in service was faithful and honorable, she had no negative entries in her records. She was unable to deal and process with what she had experienced. The military did not give her the help she needed to address her exposure to those "atrocities". Despite all the issues she has faced with her PTSD, anxiety, and depression she has accomplished great achievements in her life. She has three children, one of whom is autistic, she volunteers for various organizations, she survived cancer and became a hospice volunteer, she became a reverend and a metaphysical practitioner, she is a doctoral candidate for a doctorate in philosophy, a notary public, and she has made her career as a paralegal.

c. Her discharge haunts her, she acknowledges going absent without leave (AWOL) was not the correct answer; however, she believed she was trying to run and escape from everything that reminded her of those horrible things she witnessed and endured. She believes if her PTSD, anxiety, and depression were addressed upon returning from deployment she would have exited the military with an honorable discharge.

### 3. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 2 June 1995, for a 5-year period. She was awarded the military occupational specialty of 88M (Motor Transport Operator) and the highest rank she attained was private first class/E-3.

b. A DA Form 4187 (Personnel Action) shows the applicant's status changed from dropped from rolls to present for duty on 15 September 1997. She had surrendered to military authorities on or about 15 September 1997.

c. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 29 July 1997 and remained AWOL until on or about 15 September 1997.

d. The applicant consulted with legal counsel and knowingly, willing, and voluntarily declared that she was AWOL from on or about 29 July 1997 until on or about 15 September 1997. She made this admission for administrative purposes to process out of the Army and realized she may be given an UOTHC discharge.

e. On 16 September 1997, the commander recommended the applicant be tried by special court-martial empowered to adjudge a bad-conduct discharge.

f. The applicant consulted with legal counsel on 17 September 1997, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). She acknowledged her understanding of the following in her request:

(1) She understood that she could request discharge for the good of the service because the charges preferred against her could result in the imposition of a punitive discharge.

(2) Prior to completing this request, she was afforded the opportunity to consult with appointed counsel, who fully advised her of the basis for her contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to her.

(3) She acknowledged that she was making this request of her own free will and had not been subjected to any coercion by any person. Although counsel furnished her legal advice, this decision was her own. Additionally, she elected not to submit a statement in her own behalf.

9. On 10 December 1997, the applicant's commander recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

g. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 19 December 1997. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

h. The applicant was discharged on 29 January 1998, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 confirms her character of service was UOTHC, with separation code KFS and reentry code 3. She was credited with 2 years, 6 months, and 10 days of net active service, with lost time from 29 July 1997 to 14 September 1997 (47 days). She was awarded or authorized the National Defense Service Medal and the Army Service Ribbon.

4. The applicant provides:

a. Permanent Orders 003-31 dated 3 January 1997 showing she was awarded the driver badge – w from 13 October 1995 to 6 December 1996.

b. Her medication list with as of 1 November 2017, showing her medications prescribed and how to take them during the day. It specifically references her prescription for anxiety.

c. A notary commission certificate, ordained ministers' identification card, and her student identification card.

5. The applicant applied to the ADRB for upgrade of her discharge. Her case shows overseas service and combat service in Bosnia. After careful consideration, the board determined the discharge was both proper and equitable and voted to deny relief.

6. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

7. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under other than honorable conditions (UOTHC) discharge to honorable. She contends 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 Regular Army on 2 June 1995.
- 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 she was charged with being AWOL, from on or about 29 July 1997 and remained AWOL until on or about 15 September 1997.
- Applicant was discharged on 29 January 1998, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 confirms her character of service was UOTHC, with separation code KFS and reentry code 3.
- Applicant applied to the ADRB for upgrade of her discharge. Her case shows overseas service and combat service in Bosnia. After careful consideration, the board determined the discharge was both proper and equitable and voted to deny 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, DD Form 214, ABCMR Record of Proceedings (ROP), self-authored statement, ADRB case AR20100020834, medication list dated 1 November 2017, 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 having a hard time adjusting to military life when she received deployment orders. Due to the short suspense of the deployment orders, she was unable to say goodbye to her family and child. While deployed she witnessed mass graves of burning bodies, gunfire battles, loss of life, and she was under constant anxiety about taking fire and improvised explosive devices. She was awarded a medal for diffusing a situation where her squad was about to take fire from the enemy. While being deployed her mental and physical health suffered. When she returned from deployment, she was not offered any counseling or post deployment assistance, she was suffering from severe depression, anxiety, and post-traumatic stress disorder (PTSD). Prior to her deployment, her time in service was faithful and honorable, she had no negative entries in her records. She was unable to deal and process what she had experienced. The military did not give her the help she needed to address her exposure to "atrocities". Despite all the issues she has faced with her PTSD, anxiety, and depression she has accomplished great achievements in her life. She has three children, one of whom is autistic, she volunteers for various organizations, survived cancer and became a hospice volunteer. She also became a reverend and a metaphysical practitioner, is a doctoral candidate in philosophy, a notary public, and has made her career as a paralegal. Her discharge haunts her, she acknowledges going absent without leave (AWOL) was not the correct answer; however, she believed she was trying to run and escape from everything that reminded her of those horrible things she witnessed and endured. She believes if her PTSD, anxiety, and depression were addressed upon returning from deployment she would have exited the military with an honorable discharge.

e. Due to the period of service, no active-duty electronic medical records were available for review. 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. The applicant provides a medication list dated 1 November 2017, indicating an as needed medication prescribed for anxiety. The document does not indicate a diagnosis and this medication is being prescribed nearly 20 years post-military service, there is no additional information provided to determine if the anxiety is related to military service.

f. 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 merits consideration by the Board.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. There is no medical documentation indicating the applicant was diagnosed with a BH condition while in service. However, her service record does indicate she was deployed overseas to a combat zone.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating she has been treated for PTSD. And while the applicant self-asserted PTSD, she did not provide any medical documentation substantiating any BH diagnosis including PTSD. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. 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 advisory opinion finding insufficient evidence to support the applicant had condition or experience that mitigated her misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination.

b. However, the applicant’s AWOL was relatively short (47 days) when compared to her total service of 2 years, 6 months, and 10 days. Additionally, the applicant surrendered to military authorities, which meant she had no intention of remaining AWOL and has since acknowledged her poor decision and explained that she believed she was trying to run and escape from everything. She received an under other than honorable conditions discharge, which the Board determined to be too harsh/severe for the type of infraction that led to his separation. As a result, the Board determined while an upgrade to honorable characterization of service is not appropriate (given her AWOL); 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 his separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	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 29 January 1998 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.

[REDACTED]

[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. 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. 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.

3. 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 UOTHC 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.

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 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.

5. 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//