

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230010617

APPLICANT REQUESTS: an upgrade of her characterization of service from under honorable conditions (general) to honorable, and an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 19 July 2023
- self-authored statement, 3 November 2023
- certificate of completion, Spring 2007
- professional educators license, 1 July 2018
- character reference, from M.C., 27 September 2020
- postgraduate professional license, 1 July 2022
- character reference, from L.B., date unknown

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, in effect, when she was pregnant with another Soldier's baby, who was in the rank of staff sergeant, he harassed and threatened her and her unborn child, by saying she needed to take the blame for what occurred, or he would harm her and her unborn baby. She additionally sent an email referencing the incident in November 1997, of making false statements and larceny, she said she did not take the money from the Soldier but made a statement accepting responsibility under duress at the time. For years she lived with shame and guilt of wanting the situation corrected; however, she has since moved on with her life and lives in a positive manner. She has since become an educator for over 16 years and knows the incident being on her record has not prevented her from receiving an excellent education and job offers, it has affected her personally and would like the correction made because this was not an act in which she would have done. She references sexual assault/harassment is related to this request.

3. The applicant enlisted in the Regular Army on 7 January 1997, for a period of 4 years. She was awarded the military occupational specialty of 91B (Medical Specialist) and the highest rank she attained was private first class/E-3.
4. On 7 January 1998, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for signing an official record with the intent to deceive, on or about 19 November 1997. Her punishment imposed was extra duty for 7 days.
5. On 4 February 1998, the Criminal Investigative Division (CID) conducted an investigation and found the applicant:
 - on or about 18 November 1997 committed the offense of larceny when she stole [Person's Name] Automatic Teller Machine (ATM) card and subsequently stole \$1,100.00 from ____ Great Western Bank Savings Account
 - on 18 November 1997, she committed the offense of false swearing when she provided a statement, she knew to be false regarding the theft of the money
6. On 10 February 1998, she accepted NJP under the provisions of Article 15, UCMJ, for stealing \$200.00 on or about 26 October 1997 from private K.A., and for making an official statement with the intent to deceive on or about 18 November 1997. Her punishment imposed was reduction to private/E-1, forfeiture of \$200.00 per month for 2 months, and 45 days of extra duty.
7. On 2 March 1998, the applicant's immediate commander notified the applicant of the intent to recommend her for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c (Commission of a Serious Offense). The commander recommended the applicant receive a under honorable conditions (general) discharge and noted the specific reasons for the proposed separation were the applicant's:
 - act of larceny on or about 26 October 1997
 - making a false statement to a CID agent denying the larceny offense on or about 18 November 1997
 - altering or signing an official document on or about 7 January 1998
 - numerous counseling's for not informing her supervisors of her place of duty or outside appointments
 - behavior and demeanor towards other Soldier's
8. The applicant consulted with counsel on 2 March 1998 and was advised of the basis for the contemplated action to separate her and of the rights available to her. She requested consultation with military or civilian counsel and elected not to submit a

statement in her own behalf. She further understood she may encounter prejudice in civilian life.

9. On the same day, the applicant's immediate commander formally recommended the applicant be separated under AR 635-200, paragraph 14-12c (commission of a serious offense) and that she be issued a general discharge certificate.

10. On 3 March 1998, the applicant's intermediate commander concurred with the recommended separation under AR 635-200, Chapter 14-12c and issuance of a general discharge.

11. The separation authority approved the recommended discharge on 5 March 1998 and directed the applicant receive a under honorable conditions (general) character of service.

12. The applicant was discharged on 16 March 1998. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, in the grade of E-1. Her service was characterized as under honorable conditions (general) with separation code of JKQ and reentry code 3. She completed 1 year, 2 months, and 10 days of net active service.

13. The applicant provides:

a. A certificate of completion for participation in the academic advisor training program, her educator's license, and her postgraduate professional license.

b. Two character references summarizing the applicant's behavior as a woman of integrity, who is dependable, focused, and driven in her professional and personal life. She volunteers for multiple associations such as The Big Sister/Big Brothers club, Girls in Education, and Feeding the Homeless. She is punctual, organized, and a pleasant person to work with.

14. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

15. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

16. 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. Applicants do not have a right to a hearing before the ABCMR.

17. MEDICAL REVIEW:

a. The applicant requests upgrade of her Under Honorable Conditions, General, discharge to Honorable. She contends her misconduct was related to MST. 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 7 January 1997; 2) On 7 January 1998, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for signing an official record with the intent to deceive, on or about 19 November 1997; 3) On 4 February 1998, the Criminal Investigative Division (CID) conducted an investigation and found the applicant on or about 18 November 1997 committed the offense of larceny. Further, on 18 November 1997, she committed the offense of false swearing when she provided a statement, she knew to be false regarding the theft of the money; 4) On 10 February 1998, she accepted NJP under the provisions of Article 15, UCMJ, for stealing \$200.00 on or about 26 October 1997 from private K.A., and for making an official statement with the intent to deceive on or about 18 November 1997; 5) On 2 March 1998, the applicant's immediate commander notified the applicant of the intent to recommend her for separation under the provisions of AR 635-200, Chapter 14-12c. The applicant consulted with counsel on 2 March 1998 and was advised of the basis for the contemplated action to separate her and of the rights available to her, and on the same day, the applicant's immediate commander formally recommended the applicant be separated; 6) On 3 March 1998, the applicant's intermediate commander concurred with the recommended separation under AR 635-200, Chapter 14-12c and issuance of a general discharge. The separation authority approved the recommended discharge on 5 March 1998 and directed the applicant receive a under honorable conditions (general) character of service. The applicant was discharged on 16 March 1998.

b. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No military BH records were provided for review. A review of JLV was void of any treatment history for the applicant and she does not have a SC disability. No civilian BH records were provided for review.

c. The applicant requests upgrade of her Under Honorable Conditions, General, discharge to Honorable. She contends her misconduct was related to MST. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical/legal documentation supporting her claim of MST. In absence of documentation support that applicant assertion, there is insufficient

evidence to establish that her misconduct was related to or mitigated by MST, and insufficient evidence to support an upgrade based on BH-related medical mitigation.

d. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during her time in service that mitigated her misconduct. However, she contends her misconduct was related to MST, and per liberal guidance her assertion is sufficient to warrant the Board's consideration. 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 her misconduct was related to MST

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical/legal documentation supporting her claim of MST. In absence of documentation support that applicant assertion, there is insufficient evidence to establish that her misconduct was related to or mitigated by MST, and insufficient evidence to support an upgrade based on BH-related medical mitigation.

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 not 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, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was discharged from active duty due to misconduct, commission of a serious offense) (act of larceny, making a false statement to a CID agent denying the larceny offense, altering or signing an official document, not informing her supervisors of her place of duty or outside appointments, and behavior and demeanor towards other Soldiers.) She completed 1 year, 2 months, and 10 days of active service and received a general discharge. The Board found no error or injustice in her separation processing.

b. 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 of in-service mitigating factors to overcome the misconduct. The applicant provides a certificate of completion for participation in the academic advisor training program, her educator's license, and her postgraduate professional license. She also provides 2 character references summarizing the applicant's behavior as a woman of integrity, who is dependable, focused, and driven in her professional and personal life. She volunteers for multiple associations such as The Big Sister/Big Brothers club, Girls in Education, and Feeding the Homeless. Although reflective of her post-discharge accomplishments, the Board determined that given her serious offenses, her certificate and letters did not outweigh the misconduct that led to her general discharge. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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:

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 for correction of the records of the individual concerned.

[REDACTED]

[REDACTED] [REDACTED]

[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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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.
 - b. Paragraph 3-7b states 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.
 - c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.
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 post-traumatic stress disorder; 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.

6. 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.

//NOTHING FOLLOWS//