

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230010956

APPLICANT REQUESTS:

- reconsideration of her previous request to have her under other than honorable conditions characterization of service upgraded to under honorable conditions (General)
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 AR20220005736 on 13 December 2022.

2. The applicant states that she wishes to have her characterization of service changed from under other than honorable conditions to general. She additionally states she is eligible to receive compensation benefits. The applicant annotated post-traumatic stress disorder (PTSD) and sexual assault/harassment as an issue/condition related to her request.

3. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 13 May 1998 and reenlisted on 6 March 2002, for a term of 3 years.

b. A DA Form 2627 (Record of Proceedings under Article 15, UCMJ), dated 21 August 2003, shows the applicant accepted nonjudicial punishment (NJP) on 13 August 2003 for:

- failure to go at the time prescribed to her appointed place of duty, on or about 28 July 2003 and 29 July 2003

- failure to go at the time prescribed to her appointed place of duty, on or about 4 August 2003, 6 August 2003 (two specifications), 7 August 2003, 8 August 2003, 11 August 2003 (two specifications)
- dereliction of duty on or about 21 July 2003 and 4 September 2003
- being absent without leave from (AWOL) from on or about 2 October 2003 until on or about 12 October 2003

c. Her punishment included reduction to E-3 (suspended), forfeiture of pay for one-month, extra duty, and restriction for 14 days. On 9 September 2003, she was subsequently reduced to pay grade E-3.

d. On 22 October 2003, she tested positive for illegal drug use on a random urinalysis screening.

e. On 17 November 2003, she signed a DA Form 3881 (Rights Warning Procedure/Waiver Certificate) advising her of her rights. She made a statement admitting to the illegal use of cocaine.

f. Court-martial charges were preferred against the applicant on 21 November 2003 for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows she was charged with one specification of wrongfully using of cocaine on or between 10 October 2003 and 13 October 2003.

g. The applicant consulted with legal counsel on 9 December 2003 and was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to her.

h. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In her request for discharge, she acknowledged she understood that by requesting discharge she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

i. The applicant requested she be issued a general discharge and acknowledged she understood that if her discharge request was approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the VA, and she could be deprived of his rights and benefits as a Veteran under both Federal and State laws. She was also advised that she could submit statements on her own behalf.

j. The separation authority approved the applicant's request for discharge on 15 December 2003, in lieu of trial by court-martial and directed that the applicant be reduced to the lowest enlisted grade with the issuance of an Under Other Than Honorable Discharge Certificate.

k. On 6 January 2004, her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial and her service was characterized as under other than honorable conditions (Separation Code KFS, Reentry Code 4). She was credited with 5 years, 7 months, and 10 days of active service with three periods of lost time totaling 14 days. Her awards are listed as the Army Achievement Medal, Army Good Conduct Medal (2d Award), National Defense Service Medal, and the Army Service Ribbon. Additionally, item 18 (Remarks) shows:

- immediate reenlistments this period: 19980513 – 20020512
- member has completed first full term of service

4. On 25 January 2022, the applicant applied to the ABCMR and the Board denied the applicant's request to upgrade her discharge to general, under honorable conditions. The Board concurred with the medical opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. Although the applicant selected that other mental health issues, sexual assault/harassment, and Don't Ask, Don't Tell were associated with her misconduct, she provided no content or context related to the assertions and provided no documentation supporting her contention. Additionally, a review of records was void of any behavioral health-related treatment history or diagnosis for the applicant during or after military service. If the applicant's contentions are considered factual, her misconduct could be mitigated. However, without supporting evidence, and based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

5. On 23 January 2023, a DD Form 215 (Correction to DD Form 214) was issued with the following correction to item 18 (Remarks): "Add: Continuous honorable active service from: 19980513 – 20020305."

6. On 11 December 2023, Case Management Division sent correspondence to the applicant requesting medical documents that support her request. She was given until 11 January 2024 to provide medical evidence that supported her condition. The applicant failed to respond to the request.

7. On 11 December 2023, the Case Management Division (CMD) sent a request for redacted Criminal Investigation Division and Military Police Reports (ROI) for military sexual trauma (MST) pertaining to the applicant.

8. On 14 December 2023, CID responded to the request made by CMD and stated that their search for records pertaining to the applicant yielded no results.

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

10. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under other than honorable conditions (UOTHC) to honorable conditions (general). She contends she experienced an undiagnosed mental health condition, including PTSD, and military sexual trauma (MST) 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:

- The applicant enlisted into the Regular Army on 13 May 1998 and reenlisted on 6 March 2002.
- The applicant accepted nonjudicial punishment in August 2003 for failure to go to her appointed place of duty; dereliction of duty; and AWOL. In October 2003 she tested positive for illegal drug use (cocaine) and court-martial charges were preferred against her. She requested a general discharge, and the separation authority approved her request for discharge in December 2003 but with a characterization of under other than honorable conditions.
- The applicant was discharged on 6 January 2004 and was credited with 5 years, 7 months, and 10 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she experienced trauma during her service and had PTSD, other mental health condition, and MST. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed that the applicant presented to the VA in August 2023 with complaints of depression, anxiety, and insomnia associated with recurrent memories of her military experiences. Documentation discusses MST while in the military as well as a history of substance abuse. She was started on a psychiatric medication to treat depression and anxiety. Documentation reflects she was eligible for 90 days of humanitarian care, but there was no follow up. Documentation by civilian providers showed a diagnosis of "depression with anxiety" in May 2019 and a prescription for an antidepressant medication. There was also documentation of a prescription for an anxiolytic in 2018, and a diagnosis of opioid abuse with a prescription for naloxone in 2022. Diagnoses of chronic recurrent

major depressive disorder, anxiety state, and insomnia were noted in 2023 with prescriptions for associated medications. Additionally, her problem list showed a diagnosis of PTSD in September 2022, opioid abuse in 2022, and depression in 2019. DoD records showed prescriptions for mirtazapine in 2003 and hydroxyzine in 1999, but there was no associated documentation (author's note: mirtazapine is typically used to treat depression and hydroxyzine is commonly used to treat anxiety).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed mental health condition, including PTSD as the result of MST, at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service. Records show she was prescribed two psychiatric medications while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is sufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. DoD records show a prescription history for two psychiatric medications during the applicant's time in service, and the applicant's civilian and VA records show a history of mental health conditions, including PTSD, being diagnosed and treated. Drug use is a common self-medicating strategy for avoiding uncomfortable emotions, and avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. There is an association between MST and avoidant behavior, substance abuse, and difficulty with authority, which provides evidence of a nexus between her experience of MST. Therefore, there is evidence the applicant's misconduct is mitigatable per Liberal Consideration.

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 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 (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 reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board also determined that such upgrade did not change the underlying reason for 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 AR20220005736 on 13 December 2022. 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 ending on 6 January 2004 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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of this regulation states 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 for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

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. 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.

//NOTHING FOLLOWS//