

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011066

APPLICANT REQUESTS:

- favorable change to her separation code and narrative reason for separation
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) decision letter

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 her separation code with never correct. She is tired of living with the shame of this, as if she was a lazy low life. This code is just another embarrassment on top of what she has endured. She does not want a military sexual trauma (MST) related separation code. She wants to avoid being reminded of the traumatic events.
3. On her DD Form 149, the applicant notes other mental health issues are related to her request.
4. On 19 September 1980, the applicant enlisted in the Regular Army, for 3 years. Her record shows she was not awarded a military occupational specialty.
5. The applicant received formal counseling on 20 February 1981, for her inability to cope with the military environment. The applicant's drill sergeant notes that the applicant stated she cannot handle military life and that she is needed home to take care of her mother. The applicant's request for a hardship discharge was disapproved.

6. The applicant's immediate commander notified the applicant on 23 February 1981, that he was initiating actions to separate her from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, Trainee Discharge Program (TDP). As the specific reason, the commander cited the applicant's inability to favorably adjust to a military environment.

7. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-33.

8. The applicant acknowledged receipt of the separation notification on 24 February 1981. She indicated she understood that due to noncompletion of requisite active duty time, VA and other benefits normally associated with completion of honorable active service would be affected. Further, she understood that she would not be permitted to apply for reenlistment in the Army within 2 years of her separation. She declined to submit a statement in her own behalf. She declined a separation medical examination.

9. Consistent with the chain of command's recommendation, the separation authority approved the recommended action on 25 February 1981, and directed issuance of an Honorable Discharge Certificate.

10. The applicant was discharged on 4 March 1981. She was credited with 5 months and 16 days of net active service this period. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- Item 24 (Character of Service) – Honorable
- Item 25 (Separation Authority) – AR [Army Regulation] 635-200, paragraph 5-33f(2)
- Item 26 (Separation Code) – JET
- Item 27 (Reentry Code) – 3, 3C
- Item 28 (Narrative Reason for Separation) – TDP, marginal or nonproductive

11. The applicant provides a VA decision letter that shows she received an evaluation of 100 percent for service connected post-traumatic stress disorder (PTSD). This letter is provided in its entirety for the Board's review within the supporting documents.

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

13. MEDICAL REVIEW:

a. Background: The applicant is requesting a favorable change to her separation code and narrative reason for separation.

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 19 September 1980.
- The applicant received formal counseling on 20 February 1981, for her inability to cope with the military environment. The applicant's drill sergeant notes that the applicant stated she cannot handle military life and that she is needed home to take care of her mother. The applicant's request for a hardship discharge was disapproved.
- The applicant's immediate commander notified the applicant on 23 February 1981, that he was initiating actions to separate her from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, Trainee Discharge Program (TDP). As the specific reason, the commander cited the applicant's inability to favorably adjust to a military environment.
- The applicant was discharged on 4 March 1981. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, paragraph 5-33f(2), Narrative Reason for Separation – TDP, marginal or nonproductive, with Separation Code JET and Reentry Code 3, 3C.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "her separation code was never correct. She is tired of living with the shame of this, as if she was a lazy low life. This code is just another embarrassment on top of what she has endured. She does not want a military sexual trauma (MST) related separation code. She wants to avoid being reminded of the traumatic events." The applicant notes other mental health issues are related to her request. Due to the period of service no active-duty electronic medical records are available for review.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. The applicant initially sought services via the VA on 28 November 2017 when she presented with suicidal ideation with a plan, paranoia, dysregulated mood, and possible psychosis as well as experiencing homelessness. She was voluntarily hospitalized. A discharge summary from that hospitalization, dated 4 December 2017, indicates the applicant has "an extensive history of depression, anxiety, and dissociative experiences related to childhood trauma, MST, intimate partner abuse, estrangement, and multiple psychological stressors". The applicant was diagnosed with Delusional Disorder and complex PTSD. The applicant has intermittently participated in treatment, receiving therapy and medication management. The record confirms she is diagnosed with and has been treated for PTSD. The medical record further indicates a history of MST.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the narrative reason for the applicant's separation, "marginal or nonproductive", causes her significant distress and creates an undue stigma, thus marring her honorable discharge. A more favorable narrative reason for separation is recommended, in order to provide relief to the applicant.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant's reasoning for separation consisted of her inability to favorably adjust to a military environment. The Board reviewed and concurred with the medical reviewer's opinion finding the current narrative reason for separation causes her significant distress and creates undue stigma and a favorable narrative reason for separation is recommended.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 4 March 1981 to show in:

- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority



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. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JET" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for TDP, marginal or nonproductive.

5. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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 5-33, the TDP provided that commanders may expeditiously separate members who lack the necessary motivation, discipline, ability, or aptitude to become a productive Soldier. Additionally, Members separated under this program would be awarded an honorable character of service.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

8. 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//