

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230011396

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 given an under other than honorable discharge because she went absent without leave (AWOL) from training. She was sexually assaulted while in basic training by two drill sergeants and is attempting to receive benefits for military sexual trauma (MST) from the Department of Veterans Affairs (VA).
 - a. She was restrained by the drill sergeants and was told if she ever said anything, no one would believe her. She learned the statement was true when she notified the medical staff. The female drill sergeants noticed she lost 14 pounds and became depressed. She went from being a top performer to not wanting to do anything because she feared it would happen again. She was placed on "special details" after reporting it to another drill sergeant and was unsure if they were working together.
 - b. She submits her request in hopes of receiving VA benefits for MST and she is unable to receive the required help due to the current discharge type. She further understands that AWOL is a serious offense; however, she went AWOL to get away from the assailants and future sexual assaults. She desired a career in the military, but that changed when she was raped. She has a history of post-traumatic stress disorder and panic disorder related to the trauma she experienced in basic training and from a subsequent sexual assault that took place in 2010. The applicant indicated the MST program was not recognized until 2019 and she recently found out she qualified for

benefits as a Veteran. With an upgrade of her discharge to honorable, she would qualify for benefits with the VA.

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

a. She enlisted in the Minnesota Army National Guard (MNARNG) on 5 April 2007.

b. The available service record is void of the applicant's orders for advanced individual training; however, the DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant entered active duty on 22 May 2007.

c. Three DA Forms 4187 (Personnel Action) changed the applicant's duty status as follows:

- 15 July 2007 – present for duty (PDY) to AWOL
- 14 August 2007 – AWOL to dropped from roll (DFR)
- 15 September 2007 – DFR to PDY (surrendered to military authorities)

d. Orders 257-800, 14 September 2007, discharged the applicant from the ARNG and assigned her to a unit in Fort Leonard Wood, MO effective 14 August 2007.

e. She was discharged from the MNARNG on 14 August 2007 with an uncharacterized characterization of service. Her NGB Form 22 (Report of Separation and Record of Service) shows she completed 4 months and 10 days of net service for the period. Block 23 (Authority and Reason) lists the reason for discharge as "dropped from rolls."

f. On 20 September 2007, court-martial charges were preferred on the applicant for absenting herself from her organization from on or about 15 July 2007 to on or about 15 September 2007.

g. On 20 September 2007, after consulting with legal counsel she requested a discharge in lieu of trial by courts-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). She acknowledged:

- maximum punishment
- she was guilty of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate

- she would be deprived of many or all Army benefits, she may be ineligible for many or all benefits administered by the Veterans Administration,
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she may expect to encounter substantial prejudice in civilian life

h. On 26 October 2007, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. She would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

i. On 14 November 2007, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she completed 3 months and 23 days of active service with 62 days of lost time. She was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.

4. On 5 February 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding MST and provided a report of investigation (ROI), available for review by the Board. The ROI confirmed the applicant was sexually assaulted between on or about 27 March 2010 and 28 March 2010.

5. On 5 February 2024, the response from CID was forwarded to the applicant for acknowledgment and/or response. The applicant has not provided a response to date.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

7. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System

(iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her 14 November 2007 discharge characterized as under other than honorable conditions. She states:

“I have qualified to be a veteran and am trying to get VA MST [military sexual trauma] benefits for the sexual assaults/rapes that occurred to me while in basic from the two drill SGTs and the sexual assault from the other one that was coming back right before I left.

I was pinned against a tree by two drill SGTs during our weeklong field training exercise and raped during the night, I remember their faces and voices and that there was a storm that night. They each took their time and the other looked out while the one raped me, then they traded places and told me if I said anything nobody would believe me (which turned out to be true as I brought it up to medical staff).”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows the former USAR Soldier entered active duty for basic combat training on 22 May 2007 and was discharged on 14 November 2007 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Discharge in Lieu of Trial by Court-Martial.

d. The applicant was first seen for mental health care on 11 July 2007 at which time she informed the provider she had a significant mental health history:

“She told me she has a long history of psychiatric care dating back to the age of 5. She states she has been treated for attention deficit hyperactivity disorder (ADHD), anxiety, mood disorders, eating disorders and bipolar disorder. She was placed on medication and was actually in a group home when she signed up for the Army. She said her recruiter told her to not report her mental health history to Military Entrance Processing Station (MEPS). She last took her medication on 22 May and states she was taking Strattera, Lexapro and Depakote. She is starting to have all of her symptoms and knows she needs to get back on medication.”

e. During her period of service, she was diagnosed and treated for “Episodic Mood Disorder.”

f. A 20 September 2007 Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 15 July 2007 thru 15 September 2007.

g. On 20 September 2007, the applicant voluntarily requested discharge in lieu of trial by court-martial under chapter 10 of AR 635-200. The commander of the U.S. Army Garrison Command at Fort Knox approved her request on 26 October 2007 with the directive she receive an under other than honorable characterization of service.

h. JLV shows the applicant has been diagnosed with service-connected PTSD.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Service-connected PTSD

(2) Did the condition exist or experience occur during military service? YES: Service-connected PTSD

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As there is an association between PTSD and avoidant behaviors, there is a nexus between the applicant's diagnosed mental health condition and her period of absence without leave and thus it is mitigated under liberal consideration policies.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records and the medical review and Criminal Investigation Division (CID) Report, the Board concurred with the advising official finding an association between PTSD and avoidant behaviors, there is a nexus between the applicant's diagnosed mental health condition and her period of absence without leave and thus it is mitigated.

2. The Board determined there is sufficient evidence to support the applicant's contentions for a discharge upgrade. The Board noted many sexual assault victims do not report. However, when prepondering evidence, there are sometimes symptoms of MST displayed by victims prior to their separation. Personal MST

statements provided to the VA are not always corroborated. The CID report did determine there is evidence of MST as the VA awarded her treatment for PTSD due to MST; the Board considered this factor and agreed relief is warranted. Based on the preponderance of evidence the Board determined that the character of service the applicant received upon separation was in error or unjust. Therefore, the Board granted relief to upgrade the applicant's discharge to Honorable and amend her narrative reason to reflect secretarial authority with a separations code of JFF.

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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a new DD Form 214 for the period ending 20 September 2007 showing in:

- item 24 (Characterization of Service): Honorable
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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. 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//