

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230011630

APPLICANT REQUESTS: correction of her uncharacterized discharge to honorable. Additionally, she requests 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)
- Service Documents
- DD Form 214 9Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 sexually assaulted while at Fort Sam Houston, TX, in 1988. After the assault, she was treated terribly by her commanding officer who had no sympathy and understanding about what she was going through mentally and physically. She and her family had to contact Senator SN__ to assist her in getting out of the service. The applicant wanted nothing to do with the Veterans Administration after the way she was treated and just recently decided to fight for her discharge upgrade and benefits she deserves.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 8 June 1987.
4. A Request for Discharge from the Delayed Enlistment Program (DEP), dated 18 November 1987, shows the applicant was no longer qualified for enlistment and authority was requested by the operations officer to discharge the applicant for a medical code. In her request the reason was that she had been to the doctor for minor back pains, and she felt that this could hinder her to get in good physical condition prior to going into the Army.

5. Orders Number 55-1, dated 18 November 1987, issued by the U.S. Army Recruiting Battalion Atlanta, Marietta, GA, separated the applicant from the USAR DEP. Effective date 28 September 1987.
6. The applicant enlisted in the Regular Army on 12 April 1989. She did not complete training and was not awarded a military occupational specialty (MOS).
7. DA Form 3822-R (Report of Mental Status Evaluation), dated 8 July 1988, shows the applicant was referred by the company commander. She was interviewed and evaluated by a female behavioral science specialist. It was felt that continued counseling would be beneficial, however, the applicant did not want further counseling at the time. The applicant was made aware of the counseling services available to her. The applicant was psychiatrically cleared for any action deemed appropriate by command.
8. Chaplain's letter, dated 8 July 1988, shows he recommended the applicant's immediate release from active duty (REFRAD). As the victim of sexual assault, the applicant, requires support from her family in order for her to heal from this experience. He recommended her immediate REFRAD and the full use of local resources until which time she could return home to receive family support.
9. A Statement of Medical Option, dated 13 July 1988 shows the applicant did not desire a separation medical examination.
10. DA Form 3822-R, dated 20 July 1988, reviewed, and approved by Major RES___, Social Work Office, shows the applicant was having difficulty adjusting to the military. It was doubtful that she would develop into a productive Soldier. She was cleared for any action deemed appropriate by command. The applicant would be offered counseling in the clinic for her personal benefit, but such counseling should not inhibit command in its exercise of command responsibility. It was unlikely that any rehabilitative measures would produce an effective Soldier out of the applicant. She was immature and unmotivated to become a productive Soldier. Her further retention would likely create additional management problems for the commander and administrative separation was recommended.
11. The applicant's commander notified her on 1 August 1988 that he was initiating actions to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 11, for Entry Level Performance and Conduct. The reason for the proposed separation action was that the applicant had been unable to cope with military service following a recent sexual assault and it was recommended she receive an Entry Level Separation (ELS).

12. The applicant consulted with counsel and was advised of the rights available to her and the effects of waiving her rights. She did not elect to submit statements in her own behalf.

13. The applicant's immediate commander formally recommended the applicant be separated from the U.S. Army prior to the expiration of her term of service. The commander noted the applicant was recently a victim of sexual assault. Since this incident, she has difficulty coping with military service. The chaplain, recommended separation so that she may return to her family for support in overcoming this traumatic experience. Her chain of command approved her REFRAD.

14. The separation authority approved the recommended separation on 11 August 1988 and directed the applicant not be transferred to the Individual Ready Reserve (IRR). She would have a Separation Program Designator (SPD) code of JGA (Entry Level Status Performance and Conduct).

15. The applicant was discharged on 17 August 1988. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, Paragraph 11-3a, by reason of entry level status performance and conduct with Separation Code JGA and Reenlistment Code 3. She completed 4 months and 6 days of net active service. Her service was uncharacterized.

16. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The entry-level separation is given regardless of the reason for separation. An uncharacterized discharge is neither positive nor negative; it is not "derogatory." An uncharacterized character of service is not meant to be a negative reflection of a Soldier's military service. It merely means that the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise.

17. The applicant provides two service documents and a copy of her DD Form 214 as discussed above.

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

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of correction of her uncharacterized discharge to honorable.

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 12 April 1989, but she did not complete initial training.
- The applicant was referred by her commander on 8 July 1988 for a Mental Status Evaluation, and on 1 August 1988 the applicant's commander notified her that he was initiating actions to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 11, for Entry Level Performance and Conduct. The reason for the proposed separation action was that the applicant had been unable to cope with military service following a recent sexual assault, and it was recommended she receive an Entry Level Separation (ELS).
- The applicant was discharged on 17 August 1988, and she completed 4 months and 6 days of net active service. Her service was uncharacterized.

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 that she was sexually assaulted (MST) while in initial training. A Report of Mental Status Evaluation dated 8 July 1988 showed that the applicant's mood was "depressed," and she was referred for counseling but declined. The report noted that the applicant "needs further examination" but was psychiatrically cleared for any action deemed appropriate by command. A second Mental Status Evaluation dated 20 July 1988 was included and noted her mood, again, as depressed. The BH provider noted that the "soldier is having difficulty adjusting to the military. It is doubtful that she will develop into a productive soldier." Administrative separation was recommended based on the soldier's immaturity and inability to become a productive soldier. A memorandum related to Separation Under AR 635-200, Chapter 11, authored by the commander, cites the reason for separation as being unable to cope with military service following a recent sexual assault. There was additional documentation by the chaplain recommending release from active duty because the applicant was a victim of sexual assault and required the support of her family in order to heal from the experience. Documentation from the Troop Medical Clinic at Fort Sam Houston dated 1 August 1988 showed the applicant was experiencing insomnia and nightmares secondary to sexual assault and that she had been seen by the rape crisis center. There was also documentation by a social worker dated 18 July 1988 indicating the applicant was seen for mental health symptoms and referred into the Psychiatric Day Facility until her release from active duty. There was sufficient evidence that the applicant experienced MST and a subsequent mental health condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed a call to the Veterans Crisis Line on 8 May 2024 where it was noted that the applicant was experiencing fleeting suicidal ideation in the context of family stressors, but also that she had a history of an intentional suicidal plan at one point in her life. Documentation discusses her recent service connection through VBA and a desire to engage with mental health treatment as well as a history of diagnosis of bipolar disorder and

agoraphobia. The applicant was referred to the mental health clinic and has an appointment scheduled for 6 August 2024. Information was also provided about how to access services more immediately if needed.

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 experienced MST and a resultant mental health condition while on active service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she experienced MST resulting in a mental health condition while on active service, and this generated her discharge from the military. The documentation she provided supports this assertion.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts, and the documentation provided supports, that the MST and subsequent mental health disorder occurred during her military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant is requesting consideration of a change in her uncharacterized discharge to an honorable discharge. It is likely that, had the MST never occurred, the applicant would have been able to successfully complete her military training and term of service. Under Liberal Consideration, there is sufficient evidence to support the board's consideration of this change.

BOARD DISCUSSION:

1. 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 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 his characterization of service. One potential outcome was to grant partial relief to under honorable (general) conditions due only serving four (4) months in addition to the advising official finding sufficient evidence to support the applicant's experience of MST. However, upon further review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding sufficient evidence to support that the applicant experienced MST and a resultant mental health condition while on active service.

2. However, the Board determined the governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the

separation action is initiated while a Soldier is in entry-level status. Soldiers in the USAR and ARNG are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. The applicant did not complete training and was released from active duty by reason of entry level status performance and conduct. She completed 4 months and 6 days of net active service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier’s military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. The Board determined, notwithstanding the advising official opine, found there is insufficient evidence based on the applicant’s entry level status to grant an upgrade to honorable. Therefore, the Board denied relief.

3. 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:

<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]

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, USC, 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, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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. AR 635-200, in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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. 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 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

5. 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 Service 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. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum.

However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//