

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011965

APPLICANT REQUESTS:

- an upgrade of her under honorable conditions (General) discharge
- correction of the narrative reason for separation to reflect a reason more favorable than misconduct

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 22 October 1993

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 feels her military sexual trauma (MST) caused her to change, these changes were seen as being defiant or having an attitude. In her opinion this is why she received a general discharge with misconduct. If she had not been assaulted, she would have stayed in the U.S. Army to retire. She annotated post-traumatic stress disorder (PTSD) and sexual assault/harassment as issues/conditions related to her request.
3. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 8 October 1991.

b. The DD Form 689 (Individual Sick Slip), dated 21 May 1993 shows, the applicant went to sick call for back pain and stomach pain. The physician assistant (PA) returned her to duty with no profile.

c. DA Form 2823 (Sworn Statement), dated 25 May 1993 shows, the PA was interviewed. He was asked "Did you write no sit ups for six week on the DD Form 689 for the applicant?" The PA stated "No." He stated that he stamped the DD Form 689, and the applicant wrote below the stamp.

d. A DA Form 3822-R (Report of Mental Status Evaluation), there is no evidence of a mental disease or defect of psychiatric significance or of sufficient severity to warrant disposition. She had the mental capacity to understand and participate in the proceedings. She was cleared for any administrative actions deemed appropriate by the command.

e. On 4 January 2012, the applicant underwent a medical evaluation for the purpose of separation which indicated she was generally in good health.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. A DA Form 4187 (Personnel Action), dated 10 August 1993, shows the applicant received a summary court-martial on 3 August 1993. She was reduced to private/E-1.

g. On 25 August 1993, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was the applicant falsifying an official document, the DD Form 689. Records are void of applicant's acknowledgement.

h. Her record contains an unsigned election of rights by the applicant and her counsel.

i. On 2 September 1993, the commander provides a memorandum for record. He states the applicant was advised of her rights on 25 August. The applicant and the defense counsel refused to sign the election of rights based on the objection that she was being chaptered for a summary court-martial conviction which was not appealed. She was being chaptered for her misconduct not her summary court-martial conviction. The applicant failed to submit matters for consideration, the applicant had waived her rights.

j. The immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that her period of service be

characterized as under honorable conditions (General). The intermediate commander recommended approval.

k. On 13 September 1993, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. She would be issued a general discharge.

l. On 23 October 1993, she was discharged from active duty with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 2 years and 15 days of active service. She was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct," with reentry code 3. It also shows she was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

4. On 18 December 2023, 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 no records were found.

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

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. 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.

#### 8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of her General characterization of service and change in narrative reason for separation. She contends MST and PTSD contributed to "being defiant or having an attitude" leading to 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 08 October 1991.
- On 25 August 1993 the applicant was notified of the commander's intent to initiate separation action against her for a Commission of a Serious Offense. Specifically, falsifying an official document (DD Form 689).
- The applicant was discharged on 23 October 1993.

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's separation file contains a July 1993 Chapter Mental Status Evaluation (MSE) clearing her with no diagnosis. The separation physical reflects the applicant endorsed depression or excessive worry, but denied receiving mental health treatment.

d. Service records contain the asserted falsified DD Form 689. It is noted the provider wrote in the same box as his signature, i.e. no driving profile, although asserted anything in that box was false as he'd not put additional information with his signature. Additionally, the contested recommendation is not below the signature as asserted in support of falsification. Rather, it is in the signature box with the no driving profile which he did not contest as his own. Given the applicant has not provided a statement specific to the basis, rather noting she was difficult after the MST and this was the true underpinning of the discharge, there are questions around the authenticity of the basis for separation.

e. The VA's Joint Legacy Viewer (JLV) was also reviewed. The applicant is 30% service connected for Mood Disorder. In December 2009, she attended a trauma recovery program for MST with diagnosis of PTSD. She noted after reporting the MST, the command did separate the Soldier, but she received maltreatment by other female Soldiers afterward. She reported after the MST, she was distrustful of men and people in general leading to isolation and avoidance. She noted a childhood history of physical abuse by her mother's husband, "he almost killed me." She was close with her father until the MST. She endorsed trauma symptoms negatively impacting her functioning and quality of life. In 2010, Major Depressive Disorder was added. She attended treatment through April 2012. In April 2022, she requested medication to assist with ongoing anxiety and trauma symptoms. She was prescribed medication. In 2023, depression was the primary presentation with significant psychosocial stressors. Primarily health issues, e.g. stroke, leading to change in employment with significant financial burdens. In March 2024, she started intensive treatments due to unremitting depression with suicidal ideation and resurfacing trauma. She continues with these.

f. 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 misconduct. Although the validity of the basis for separation is in question, even if taken at face value the misconduct is not egregious, hurt anyone, or otherwise outweigh a MST and resulting PTSD. Accordingly, while the experience and condition do not directly excuse the basis for separation, it certainly outweighs.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes. The applicant experienced a MST resulting in PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Based on liberal consideration and in consideration of the basis for separation, the MST and resulting PTSD and psychological distress outweighs the basis for separation.

BOARD DISCUSSION:

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 misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing falsification of a sick call slip, an official document. The Board found no error or injustice in the separation proceedings and designated characterization of service; however, the Board reviewed and concurred with the medical advisor's review finding evidence to support the applicant suffered from a military sexual trauma and granted relief.

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 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 22 October 1993 to show in:

- item 24 (Character of Service): Honorable
- 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

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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 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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 14 of the regulation states action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
4. 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.

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 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.

6. 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.

7. 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//