

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012580

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

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault)
- Self-Authored Statement
- Seven Character Letters

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 that her military career was honorable until she went absent without leave (AWOL), after being sexually assaulted, twice, by a sergeant. In an attempt to stop the assaults and fear for her safety, she went AWOL, after she was told she would be harmed if she told anyone. She annotated post-traumatic stress disorder, other mental health, and sexual assault/harassment as issues/conditions related to her request.
3. The applicant provides:
 - a. VA Form 21-0781, which recounts her experiences being sexually assaulted while in basic training and how it has subsequently affected her life.
 - b. Seven character letters from family members and friends who have all known the applicant for over 20 years. Five of the seven letters describe how the applicant disclosed to them that her reason for leaving the military is because she went AWOL

after being sexually assaulted twice and its effects on her life once she was discharged. The other two letters attest to her character as a trustworthy, loving, and patient person who demonstrates integrity and resiliency.

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

a. She enlisted in the Regular Army on 30 May 2006.

b. Two DA Forms 4187 (Personnel Action) show that her duty status went from present for duty to AWOL effective 27 April 2006; and from AWOL to dropped from rolls, effective 27 May 2006.

c. DD Form 616 (Report of Return of Absentee) shows that the applicant was apprehended by civil authorities in Lumberton, North Carolina on 9 September 2007. Her duty status changed from dropped from rolls to attached/present for duty, effective 9 September 2007.

d. On 17 September 2007, court-martial charges were preferred against the applicant for violation of Article 86 (AWOL) of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with absenting herself from her unit; to wit: Company B, 2nd Battalion, 10th Infantry Regiment, from on or about 27 April 2006 to on or about 9 September 2007.

e. On 17 September 2007, she voluntarily requested discharge for the good of the service, in accordance with Chapter 10, Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations). In her request for discharge, she acknowledged she understood if the discharge request were approved, she might be discharged under other than honorable conditions and be furnished an Other than Honorable Discharge Certificate. She also acknowledged she understood she might be deprived of many or all Army benefits, she might be ineligible for many or all benefits administered by the Department of Veterans Affairs, she might be deprived of her rights and benefits as a veteran under both Federal and State laws, and she might expect to encounter substantial prejudice in civilian life.

f. On 19 October 2007, the separation authority approved the applicant's request for discharge and directed an under other than honorable conditions characterization of service.

g. She was discharged under the provisions of AR 635-200, Chapter 10 on 9 November 2007. Her DD Form 214 shows a narrative reason for separation of "in lieu of trial by court-martial" and an under other than honorable conditions characterization of service. She completed 3 months of active service.

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

6. On 26 January 2024, 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.

7. On 11 March 2024, CID responded to the request made by CMD and stated that their search for records pertaining to the applicant yielded no results.

9. Also by regulation, AR 635-200, in effect at the time, 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 Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

10. 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.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under other than honorable conditions (UOTHC) discharge. On her DD Form 149, the applicant notes PTSD, OMH, and sexual assault/harassment as related to her request.

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 Army on 28 March 2006.
- Two DA Forms 4187 (Personnel Action) show that her duty status went from present for duty to AWOL effective 27 April 2006; and from AWOL to dropped from rolls, effective 27 May 2006.
- DD Form 616 (Report of Return of Absentee) shows the applicant was apprehended by civil authorities in Lumberton, North Carolina on 9 September 2007. Her duty status changed from dropped from rolls to attached/present for duty, effective 9 September 2007.
- On 17 September 2007, court-martial charges were preferred against the applicant for violation of Article 86 (AWOL) of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with absenting herself from her unit; to wit: Company B, 2nd Battalion, 10th Infantry Regiment, from on or about 27 April 2006 to on or about 9 September 2007.
- On 17 September 2007, she voluntarily requested discharge for the good of the service, in accordance with Chapter 10, Army Regulation 635-200 (Personnel

Separations – Active Duty Enlisted Administrative Separations). In her request for discharge, she acknowledged she understood if the discharge request were approved, she might be discharged under other than honorable conditions and be furnished an Other than Honorable Discharge Certificate.

- Applicant was discharged on 9 November 2027 under the provisions of AR 635-200, Chapter 10, with a narrative reason for separation of “in lieu of trial by court-martial” and an under other than honorable conditions characterization of service. She was assigned separation code KFS and RE 4.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant asserts via self-authored statement her military career was honorable until she went absent without leave (AWOL), after being sexually assaulted, twice, by a sergeant. In an attempt to stop the assaults and fear for her safety, she went AWOL, after she was told she would be harmed if she told anyone. The applicant recounts her experiences of being sexually assaulted/raped while in basic training and how it has subsequently affected her life. The applicant provides seven character letters from family members and friends, with five of the letters describing how the applicant disclosed to them her reason for leaving the military after being sexually assaulted twice.

d. Limited active-duty electronic medical records were available for review, showing the applicant was seen for minor medical issues including and upper respiratory infection as well as knee and leg pain.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not participated in behavioral health services, likely due to the characterization of her discharge. However, the record indicates she has reached out to the Veteran Crisis Line on five separate occasions. On 30 June 2023 and 10 July 2023, she reported being sexually assaulted in the military and experiencing anxiety, depression, and other symptoms in response to military sexual trauma (MST). On 29 February 2024, she once again contacted the Veteran Crisis Line and reported suicidal ideation as well as nightmares related to military sexual trauma but was having difficulty accessing the VA for mental health services due to her discharge status. A safety plan was developed, and the applicant was referred to the local Suicide Prevention Coordinator. The applicant once again contacted the Veteran Crisis Line on 4 March 2024 due to suicidal ideation. She was informed that she was not eligible for services via the VA due to her discharge status, a safety plan was developed, and the applicant was referred to the local Suicide Prevention Coordinator and the MST Coordinator.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an experience of MST that mitigates her misconduct.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports being raped twice while in basic training.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserts the mitigating experience of two sexual assaults/MST. As there is an association between MST and avoidant behavior, there is a nexus between the applicant's experience of MST and her misconduct of being AWOL.

h. Per Liberal Consideration, the applicant's assertion of MST is sufficient to warrant consideration by the Board.

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 charged with absenting herself from her unit from 27 April 2006 to 9 September 2007, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. However, the Board found the applicant's statement and the medical reviewer's opinion to be sufficient to warrant partial relief. The Board determined that due to the behavioral health condition associated with the applicant's service, an uncharacterized discharge was appropriate. The Board determined that the applicant was not awarded a military occupational specialty; therefore, there is no regulatory provision to amend the applicant's characterization of service to honorable. The Board concluded that the corresponding narrative and codes be amended to reflect entry-level.

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 9 November 2007 to show in:

- item 24 (Character of Service): uncharacterized
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JGA
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Entry Level Performance and Conduct

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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 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.

3. Army Regulation 635-5 (Separation Documents) states:

a. 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.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldiers' eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

4. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who 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. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was

normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

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//