

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230012999

APPLICANT REQUESTS:

- an upgrade of her characterization of service from under honorable conditions (general) to honorable
- award of the Army Good Conduct Medal (2nd Award)
- personal 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), 8 August 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 8 December 2006

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, in effect, she received a reevaluation of her discharge which awarded her an honorable discharge. She is requesting her DD Form 214 show her honorable discharge and award of a second Army Good Conduct Medal.
3. The applicant enlisted in the Regular Army on 23 March 2001, for a 4-year period. She subsequently extended on 16 May 2003, for 18 months to meet the service remaining requirement for an approved Foreign Service Tour Extension.
4. Her Enlisted Record Brief shows:
  - she was awarded the military occupational specialty of 96H (Common Ground Station Operator)
  - the highest rank she attained was sergeant/E-5
  - she served in Iraq from 15 August 2005 to 12 September 2006

5. The applicant was formally counseled on three occasions on 24 September 2005, 29 September 2005, and 16 October 2005, the areas of emphasis covered were:

- failure to report to her appointed place of duty on multiple occasions
- failure to obey an order or regulation
- discussion of her repetitive inability to report to work on time

6. The applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) on 31 October 2005, for failure to go to her appointed place of duty. The continuation sheet is void in the applicant's official military personnel file. Her punishment imposed was reduction to specialist/E-4, forfeiture of \$938.00 per month for two months, extra duty for 45 days, and restriction for 45 days.

7. The applicant accepted NJP under the provisions of Article 15, of the UCMJ on 23 August 2006, for failure to go to her appointed place of duty on or about 4 August 2006, to wit: accountability formation, violating a lawful general order to wit: wrongfully consuming alcohol on or about 4 August 2006, and being drunk on duty as a Soldier serving in Iraq during Operation Iraqi Freedom on or about 5 August 2006. Her punishment imposed was reduction to private/E-1 and forfeiture of \$636.00.

8. The applicant returned from Iraq on 12 September 2006 and on 27 September 2006, she accepted developmental counseling showing the rear detachment commander was initiating separation action under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b (Pattern of Misconduct). The back page of the form shows the applicant stated:

a. She disagreed with the counseling she received from the rear detachment commander, she referenced having documentation showing when she left Iraq and was led to believe, she was being released under AR 635-200, Chapter 5-13 (Separation because of personality disorder).

b. Additionally, she added her personal weapons were taken and she was required to remain in the barracks while she was separating. She requested to speak to legal and her mental health doctors and filed an Inspector General complaint.

9. A memorandum for record, dated 27 September 2006, states the applicant was being returned to rear detachment to complete UCMJ administrative separation procedures at the installation. Adding, after an initial chapter packet of 5-13 was submitted, the Judge Advocate General recommended initiation of Chapter 14-12b separation based on the evidence provided in the chapter packet.

10. On 4 October 2006, the applicant underwent a mental status examination for administrative separation.

a. In the opinion of the medical provider the applicant had the mental capacity to under and participate in the proceedings, she was mentally responsible, she had a psychiatric condition that required treatment and she was motivated to continue in military service.

b. She was further recommended for a follow up appointment with a behavioral health provider and to start psychiatric medication with her consent. It was recommended the applicant be prevented from having access to weapons and ammunition until cleared from mental health.

c. She meet psychiatric criteria for administrative separation in accordance with AR 635-200, Chapter 5-13, she was found to not have a severe mental disorder and was not considered mentally disordered, however she manifested a long-standing disorder of character, behavior, and/or adaptability that was so severe it precluded further military service. It was the professional opinion she would not respond to rehabilitation or other treatment methods and was not suitable for continued service.

d. Remarks show the applicant was air evacuated from theater for psychiatric reasons and further evaluation and psychological tests revealed a personality disorder and post-traumatic stress disorder (PTSD)/depression which existed prior to entry on active duty. The conditions were not permanently aggravated by active duty service, and she manifested behavioral problems that warranted administrative separation under Chapter 5-13.

11. The applicant was notified by her immediate commander on 12 October 2006 of the intent to initiate separation action against her under the provisions of AR 635-200, paragraph 14-12b, for patterns of misconduct. As specific reasons for the intended action, her commander noted the applicant's multiple occasions of failure to report, disobeying a superior commissioned officer, and two occasions of receiving nonjudicial punishment. The applicant acknowledged receipt of the notification on the same date.

12. The applicant's immediate commander formally recommended her separation from service, under the provisions of AR 635-200, paragraph 14-12b, by reason of patterns of misconduct. The intermediate commander's concurred with the recommendation and further recommended an under honorable conditions (general) discharge.

13. On 1 December 2006, the separation authority reviewed the administrative separation and the recommendation for initiation of Medical Evaluation Board proceedings and did not find the disability the cause, or a substantial contributing cause of the applicant's misconduct. Further finding her pattern of misconduct did not warrant disability processing and he directed the applicant complete her separation under the provisions of AR 635-200, Chapter 14-12b, for a pattern of misconduct.

14. The applicant was discharged on 8 December 2006, under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct, in the grade of E-1. Her DD Form 214 confirms her character of service was under honorable conditions (general), with separation code JKA and reentry code 3. She was credited with 5 years, 8 months, and 16 days of net active service with service in Iraq from 1 August 2005 to 13 September 2006. She was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Non Commissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Combat Action Driver Badge
- Driver and Mechanic with Driver Badge
- Wheeled Vehicle(s) Clasp
- Driver and Mechanic with Mechanic Clasp

15. The applicant's record is void of orders awarding her the Army Good Conduct Medal (2nd Award).

16. The ABCMR acknowledged receipt of the Department of Defense Inspector General investigation pertaining to the applicant's appeal under allegations of whistleblower reprisal, the Department of Defense Inspector General agreed that the responsible management officials did not reprise against the applicant for making protected communications and the ABCMR closed the administrative acknowledgement.

17. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

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

19. 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 (EMR) (AHLTA and/or MHS Genesis), 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 has applied to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows he entered the Regular Army on 23 March 2001 and was discharged under honorable conditions (general) on 8 December 2006 under the separation authority provided by paragraph 14-12b of AR 635-200, Personnel Separations – Enlisted Personnel (6 June 2005): Pattern of Misconduct.

d. The EMR shows she was first evaluated by behavioral health on 30 August 2006 and was diagnosed with depression. A full evaluation completed by a psychiatrist (CPT F.W.P.) on 8 September 2006 shows she had pre-service mental health issues, including 3 suicide attempts and likely PTSD from childhood traumas:

“ ... She has been engaged intermittently in therapy since her childhood when her mother killed her second husband in front of the patient. The patient's first exposure to psychotropic medications was while she was deployed to Iraq. She reports that she was engaged in hypnotherapy around the age of 4 - 5. She denies any psychiatric hospitalizations or violent acts. She reports that she attempted to overdose on pills at ages of nine, 11 and 13 but was never hospitalized after these incidents as her mother made her throw up.”

e. The psychiatrist diagnosed her with depression not otherwise specified (NOS) and “likely longstanding PTSD due to childhood trauma.” Though she had been diagnosed with a personality disorder while in theater, the provider stated “Cluster B traits reported by patient. Patient currently depressed and under stress, so will defer formal diagnosis until after psych testing.” She was being treated with trazodone, Prozac, and therapy.

f. The applicant underwent a pre-separation Behavioral Health Evaluation for a pending misconduct separation on 4 October 2006. The same psychiatrist, CPT F.W.P., noted she was anxious and had fair (versus good or poor) judgement and impulse control. The remainder of the examination was normal with the physician stating she had the mental capacity to understand and participate in the proceedings, was motivated to remain in the military, had a psychiatric condition which required

treatment, and met the psychiatric criteria for administration under paragraph 5-13 of AR 635-20 - Separation because of personality disorder. He stated:

“SM [Service Member] air evacuated from theater for psychiatric reasons. Further evaluation and formal psychological testing at FWA revealed personality disorder and PTSD/depression, which existed prior to entry unto active-duty service.

These conditions were not permanently aggravated by active-duty service. As a result of the above mentioned psychiatric conditions combined with advancing rank and responsibility in the US Army, the SM has manifested behavioral problems that warrant administrative separation under Chapter 5-13.”

g. When seen by CPT F.P. on 12 October 2006, he noted she was still undergoing separation under paragraph 14-12b and not his recommended paragraph 5-13 of AR 635-200. He stated:

“1. DEPRESSION: The patient has undergone clinical interview and psychological testing and does have a personality disorder not otherwise specified, post-traumatic stress disorder, chronic, which existed prior to service and depressive disorder not otherwise specified which existed prior to entry onto active duty service. The patient's recent alcohol and missing formation issues stem from her personality disorder.

Given her difficulties in the military as a result of these issues, she has been recommended for a chapter separation. That being said, it does appear that the service member is being pushed out of the military and that her mental health issues and medical care are being diminished. The SM is aware of her options for recourse  
...

2. CHRONIC POST-TRAUMATIC STRESS DISORDER: ...please see above.  
Medication(s):

3. Personality disorder: please see above.”

h. The applicant had received multiple counseling statements and two Article 15's for failures to report. Her second Article 15 also included charges of violating General Order Number 1 (No drinking alcohol in theatre) and being drunk while in Baghdad, Iraq.

i. She underwent her pre-separation examination in October 2006. The provider noted she had undergone recent ankle ligament repairs and reconstruction (13 October 2006) and was undergoing counseling for PTSD. He found she was qualified for separation.

j. On 12 October 2006, her company commander informed her of their initiation of separation action under paragraph 14-12b of AR 635-200:

“The reasons for my proposed action are: On or about 31 Oct 05, you received a Field Grade Article 15 for violation of Article 86 - Failure to go at the time prescribed to your appointed place of duty. On or about 23 Aug 06, you received a Field Grade Article 15 for violation of Article 86- Failure to go at the time prescribed to your appointed place of duty-violation of Article 92 - Failure to Obey an Regulation; and violation of Article 112 - Drunk on Duty. In addition, on the following dates, you received a DA Form 4856 for Failure to be at your Appointed Place of duty, 24 Sep 05, 29 Sep 05, and 16 Oct 05.”

k. On 31 October 2006, the Brigade Commander the now Private be discharged under paragraph 14-12b of AR 635-200 with a General (Under Honorable Conditions) characterization of Service.

l. CPT F.W.P. then recommended the applicant be referred to DES on 6 November 2006.

m. However, the applicant’s misconduct and pending separation under paragraph 14-12b of AR 635-200 made her ineligible for referral to the PEB. Paragraph 4-1a of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

Uniform Code of Military Justice (UCMJ) action. The case of a soldier charged with an offense under the UCMJ or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for, or continue, disability processing unless -

- (1) The investigation ends without charges.
- (2) The officer exercising proper court-martial jurisdiction dismisses the charges:
- (3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such sentence.

n. Paragraph 4-3a and 4-3b of AR 635-40:

“a. Except as provided below, an enlisted soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization, of service of under, other than honorable, conditions.”

b. If the case comes within the limitations above, the commander exercising, general court-martial jurisdiction over the soldier may abate the administrative

separation. This authority may not be delegated. A copy of the decision, signed by the general court-martial convening authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

- (1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.
- (2) Other circumstances warrant disability processing instead of alternate administrative separation.”

o. There was no case initiated in ePEB. Despite that, her GCMCA took the above regulations into consideration and directed she be administratively separated rather than entered into the DES. From his 1 December 2006 Memorandum:

I have reviewed the administrative separation approved by the Commander, Arctic Support Command, on 31 October 2006, for PVT [Applicant], Rear Detachment, 4th Squadron, 14<sup>th</sup> U.S. Cavalry for a pattern of misconduct. I have also reviewed the 6 November 2006 recommendation for initiation of Medical Evaluation Board proceedings from CPT F.W.P., Chief, Psychiatry, Bassett Army Community Hospital.

I do not find that the disability is the cause, or a substantial contributing cause, of PVT [Applicant]'s misconduct. I further find that PVT [Applicant]'s pattern of misconduct does not warrant disability processing. I direct that the PVT [Applicant]'s command complete her separation under AR 635-200, Chapter 14-12b, for a pattern of misconduct.”

p. JLV shows she has VA service-connected anxiety disorder.

q. It is the opinion of the ARBA medical advisor that a referral of her case to the DES for her pre-existing mental health conditions is unwarranted.

r. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? The applicant was seen for pre-service mental health conditions (Depression, chronic PTSD, and personality disorder NOS). She now has a diagnosis of anxiety disorder which had been service-connected by the VA



(3) Does the condition or experience actually excuse or mitigate the discharge? Yes: As anxiety disorder is associated with avoidant behaviors and self-medicating with drugs and/or alcohol, and oppositional behaviors/resistance to authority, the condition fully mitigates the misconduct for which she was separated under paragraph 14-12b of AR 635-200.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade: Dent. The evidence shows the applicant exhibited a pattern of misconduct consisting of multiple occasions of failure to report, disobeying a superior commissioned officer, and two occasions of receiving nonjudicial punishment. As a result, her chain of command initiated separation action against her. She was separated with a general discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board noted the medical official's finding sufficient evidence to support the applicant had in service anxiety disorder, which is associated with avoidant behaviors and self-medicating with drugs and/or alcohol, and oppositional behaviors/resistance to authority, and that the condition fully mitigates the misconduct for which she was separated under paragraph 14-12b of AR 635-200. However, the Board also noted that the misconduct the applicant committed in a combat zone not only endangered her but also other Soldiers. Thus, notwithstanding the medical official's finding, the Board determined a general discharge – what the applicant received – is appropriate and does not warrant a further upgrade.

b. Army Good Conduct Medal. Deny The applicant completed 5 years, 8 months, and 16 days of active service. Each award of the Army Good Conduct Medal requires 3 continuous years of active service. She was awarded one award of the Army Good Conduct Medal for the first 3 years of service. She did not qualify for a second award because she only completed 2 years, 8 months, and 16 days.

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]

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[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, 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. Section 1556 of Title 10, USC, 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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards and states the Army Good Conduct Medal is awarded to individuals who distinguish themselves by their conduct, efficiency, and fidelity. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders. Although there is no automatic entitlement to the Army Good Conduct Medal, disqualification must be justified.

5. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JKA" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 14, Paragraph 14-12b, by reason of pattern of misconduct.

6. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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 3-7b states 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 5, paragraph 5-13, provides that Soldiers may be separated for personality disorder not amounting to disability that interferes with assignment or with performance of duty, when so disposed as indicated below.

(1) The condition is a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty. (Exceptions: combat exhaustion and other acute situational maladjustments.)

(2) The diagnosis of personality disorder must have been established by a psychiatrist or doctoral level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components. It is described in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

(3) Separation because of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired.

(4) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(5) When it has been determined that separation under this paragraph is appropriate, the unit commander will take the actions specified in the notification procedure.

(6) The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

7. 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 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 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 to 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, 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.

//NOTHING FOLLOWS//