

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230013032

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Medical Record
- Associate of Arts Diploma
- Bachelor of Science Diploma
- International Honor Society in Psychology Certificate
- University Verification
- Seven Certificates
- Five Letters of Support
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum, subject: Request for Discharge in Lieu of Trial by Court-Martial – [Applicant], 16 November 1998
- Document, Referral Comments, 16 November 1998
- Business Account Banking Form

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 humbly requests this upgrade because she has matured and grown past the hurt she felt following her unfair separation.

a. The applicant feels her leadership did not provide her with an appropriate judicial process, and the lies and coercive tactics used by military investigators and attorneys ultimately caused her to incur mental health issues. She states, "They instilled fear in

me through threats, manipulation, and intimidation. They continued to lie and repeatedly state that I would be able to reenter the Army after 6 months (if I chose to)...they (then) discharged me for the Good of themselves, not of the service."

b. The applicant describes how, after her separation, she sought to reenter the Army, but when she went to her local Military Entrance Processing Station, she met her future husband and decided to put her plans on hold. They married and her husband was reassigned to Germany, where, after a tumultuous pregnancy and difficult birth, she felt it was imperative to move back to the U.S. and stay with her parents as she recovered.

c. In or around 2005, she started her efforts to correct her records, but when she asked for her personnel file, some of the documents required to file an adequate request were missing. "During this time, physical medical conditions resurfaced and exacerbated resulting in multiple surgeries, on-going treatment, and divorce, bringing about a relocation to my home state in 2010. It took me two years to readjust while recovering, going to rehabilitation, pain management, therapy, counseling, work, caring for my child, and going to school."

d. In 2012, the applicant decided to enlist into the U.S. Army Reserve; "...it was during this timeframe, where I found out about the meaning of the (RE) (reentry) codes, and that I would not ever be able to enter Army nor any other branch of service...that's when it really hit me that I had been lied to and just pushed aside." "I did what was asked of me, and when I simply asked to be told the truth concerning my ability to join the military, I was betrayed and lied to, because of my youth and lack of knowledge."

e. The applicant contends, since her discharge from the Army, she has not been in any type of trouble; to the contrary, her post-service accomplishments would make her someone of whom the military would be proud.

f. She annotates post-traumatic stress disorder (PTSD) and sexual assault/harassment as issues/conditions related to her request.

3. The applicant provides documents from her separation packet; two diplomas, verification she completed a master's degree, and an International Honor Society Certificate, attesting to the level of her academic achievements; a business account bank form; and multiple certifications. Additionally, she submits the following:

a. A medical report showing the applicant's first name but a different last name and identifies the applicant as having another last name in the body of the report. The chief complaint addressed is the applicant's neck and lower back pain.

b. Five letters of support that describe the applicant as someone with an unyielding dedication to exceeding expectations; strong analytical and critical thinking skills; and meticulous work habits, while at the same time being kind and approachable. She is "an individual who takes the initiative to make sure her work and care of her patients (is) done exceptionally (well) and with thorough attention."

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

a. On 27 June 1997, she enlisted into the Regular Army.

b. Upon completion of initial entry training and the award of military occupational specialty 54B (Chemical Operations Specialist), orders assigned her to Fort Hood, TX; she arrived at her new duty station, on or about 7 January 1998.

c. On 12 May 1998, the U.S. Army Criminal Investigation Command (CID) received a report that alleged the applicant and two other Soldiers had conspired to forge another Soldier's signature on a personal check and share the \$900 received after the check was cashed. On 13 May 1998, after being warned of her rights, the applicant provided a sworn statement in which she admitted to conspiring with the two other Soldiers to cash another Soldier's personal check; she denied writing anything but the date and the name of a fellow conspirator on the check.

d. On 9 November 1998, court-martial charges were preferred against her for the below-listed violations of the Uniform Code of Military Justice (UCMJ):

- Article 81 (Conspiracy) – in that, between 1 April and 10 May 1998, the applicant conspired with two other Soldiers to commit forgery and larceny of funds valued at more than \$100
- Article 121 (Larceny), two specifications –in that, between 1 April and 8 May 1998, the applicant stole property of some value belonging to another Soldier and/or a local bank; in that, on 9 May 1998, the applicant stole money, valued at more than \$100, from another Soldier and/or a local bank
- Article 123 (Forgery) – in that, on 9 May 1998, the applicant falsely uttered a check with the intent to defraud

e. On 12 November 1998, after consulting with counsel, the applicant voluntarily requested separation under the provisions of chapter 10 (Discharge In Lieu of Trial by Court-Martial), AR 635-200 (Personnel Separations – Enlisted Personnel). In her request, she affirmed no one had subjected her to coercion, and counsel had advised her of the implications of her request. The applicant further acknowledged she was guilty of one or more of the charges against her, and she elected not to submit statements in her own behalf.

f. On 16 November 1998, the trial counsel recommended approval of the applicant's separation request to the applicant's chain of command. The trial counsel additionally advocated for an under other than honorable conditions characterization of service but noted the offenses would not be easy to prove. The Chief of Justice Review added, "One check involved in forgery...little evidence that she (applicant) actually stole the check & evidence that she wrote the check is fairly weak. Co-conspirators are also receiving ch(apter) 10s & may not be available to testify." The chain of command, company through brigade-level commanders, accepted the trial counsel's recommendations.

g. On 16 November 1998, the separation authority approved the applicant's separation request and directed her under other than honorable conditions discharge; in addition, he directed the applicant's reduction to private (PV1)/E-1.

h. The applicant was discharged on 9 December 1998. Her DD Form 214 shows she completed 1 year, 5 months, and 13 days of active service. It also shows in:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon and Marksman Marksmanship Qualification Badge with Rifle Bar
- Item 25 (Separation Authority) – AR 635-200, Chapter 10
- Item 26 (Separation (SPD) Code) – "KFS"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "In Lieu of Trial by Court-Martial"

5. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her discharge of under other than honorable conditions (UOTHC). She contends PTSD and sexual assault/harassment are related to her request. 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: 1) The applicant enlisted in the Regular Army on 27 June 1997; 2) On 9 November 1998, court-martial charges were preferred against the applicant for conspiracy to commit forgery and larceny, theft of property of another Soldier and/or local bank, and forgery; 3) The applicant was discharged on 9 December 1998, Chapter 10-"In Lieu of Trial of Court-Martial." Her nature of service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided.

c. The applicant annotated PTSD and sexual assault/harassment as issues/conditions related to her request for a discharge upgrade. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. In addition, there is insufficient evidence she reported sexual assault/harassment while on active service. There was evidence that the applicant, while a dependent of an Air Force active-duty service member, received psychiatric medication from primary care or medical providers starting in 2004 for symptoms of mild-moderate depression, anxiety, and insomnia. She was intermittently seen for medication management, but there is insufficient evidence she attended behavioral health therapy appointments or received counseling. Later in 2007, there was some brief information available in the military electronic medical record that the applicant was reported to have been seen by a civilian provider off base, who felt she met criteria for Bipolar Disorder and PTSD. However, there was no report of the applicant's current symptoms or history of symptoms. There was no follow up to this encounter. Later in 2010, the applicant and her spouse were seen for marital problems for a few sessions with limited information provided about these encounters, which was discontinued in 2012. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD related to her active-duty service or reported being exposed to sexual assault/harassment during her active service in the electronic military service record.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition including PTSD by the VA or reported a sexual assault/harassment during her active service to the VA. She also did not receive any service-connected disability. No additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts PTSD and sexual assault/harassment are related to her request for a discharge upgrade. After her discharge, she was diagnosed with current symptoms of anxiety, depression, and insomnia. Later there was one encounter that reported a civilian provider outside of the military medical system diagnosed with applicant with PTSD and Bipolar Disorder

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts PTSD and sexual assault/harassment are related to her request for a discharge upgrade.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experiencing a mental health condition including PTSD, while on active service. She also marked sexual assault/harassment was related to her request. However, there is no nexus between PTSD and sexual assault/harassment and her misconduct of conspiracy, larceny, and forgery: 1) these types of misconduct are not a part of the natural history or sequelae of reported PTSD and sexual assault/harassment; 2) Her reported PTSD and sexual assault/harassment does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends a mental health condition or an experience is related to her misconduct/discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 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 conspiracy, larceny and forgery, offenses punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he 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. The Board noted the applicant's contention of post-traumatic stress disorder and sexual assault/harassment; however, reviewed and concurred with the medical advisor's review finding no evidence of a behavioral health condition and no nexus between the type of misconduct and the applicant's contentions. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

■

■ ■

■

■

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 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. AR 635-200, in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

d. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

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 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 Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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. 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.

7. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//