

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20230013542

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions discharge to honorable
- restoration of her pay grade of specialist (E4)

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Disability Benefits Rating
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 2 July 1992

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 after experiencing several instances of trauma something shifted in her but she did not understand what or why. After she failed a couple of urinalyses as a result of trying to self-medicate with marijuana she was discharged. In June of 2021, she was determined to be 100% service connected for post-traumatic stress disorder (PTSD). For this reason, she believes that she deserves a review and consideration to have her discharge upgraded from general under honorable conditions to honorable. It would also be nice to have her Specialist (E4) pay grade restored since it was taken from her just before her discharge.
3. The applicant provides a VA rating decision dated 8 June 2021 informing her that she was granted service connection with an evaluation of 100% for PTSD effective 2 May 2019, and also listed other service connected ratings for physical conditions.
4. A review of the applicant's record shows:

- a. She enlisted in the Regular Army on 8 March 1989.
- b. Her foreign service includes a tour in Germany from 26 September 1989 to 17 January 1992 and service in Southwest Asia from 13 December 1990 to 18 April 1991.
- c. On 8 May 1992, she accepted nonjudicial punishment for one specification of wrongful use of marijuana. Her punishment included reduction to private first class, E-3. On 12 May 1992 she appealed the punishment and on 29 May 1992 her request was denied.
- d. A DA Form 3822 (Report of Mental Status Evaluation), dated 7 May 1992, confirmed the applicant was referred for a mental evaluation for the purpose of separation. The physician noted in the remarks, the applicant refused to offer any information concerning the alleged drug use and that she reported feeling insulted by being referred to Community Mental Health Service. He further indicated there were no psychological problems evident at that time and that the applicant was psychiatrically cleared for any administrative action deemed appropriate by the commander.
- e. The service record includes the applicant's medical evaluation for the purpose of administrative separation which indicated she was generally in good health.
 - Standard Form (SF) 93 - (Report of Medical History) dated 7 May 1992
 - SF 88 (Report of Medical Examination)
- f. On 11 June 1992, the applicant's immediate commander notified the applicant, of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), Chapter 14-12c, for misconduct – abuse of illegal drugs. The reason for his proposed action was based on the applicant testing positive on the unit urinalysis conducted on 25 March 1992.
- g. After consulting with legal counsel, she acknowledged:
 - the rights available to her and the effect of waiving said rights
 - she may encounter substantial prejudice in civilian life if an general, under honorable conditions discharge is issued to her
 - she may apply to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading
 - she is ineligible to apply for enlistment in the Army for 2 years after discharge
 - she elected to submit matters

h. The applicant indicated in her rebuttal matters that during the Article 15 hearing that she was not given the opportunity to present all the witnesses and statements she wished to present on her behalf. She further addressed her concerns during the Article 15 appeal process, discrepancies, and the doubt she felt occurred during the chain of custody process of the unit urinalysis. She felt her concerns casted reasonable doubt on the evidence used to support the initiation of her separation and that it would be unjustified to separate her.

i. On 11 June 1992, the immediate commander initiated separation action against the applicant for abuse of illegal drugs. He recommended that her period of service be characterized as general, under honorable conditions. The intermediate commanders recommended approval.

j. On 26 June 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, for abuse of illegal drugs. She would be issued a general, under honorable conditions characterization of service.

k. On 2 July 1992, she was discharged from active duty in accordance with chapter 14-12c of AR 635-200, with a general, under honorable conditions characterization of service. Her DD Form 214 shows she completed 3 years, 3 months, and 25 days of active service with no lost time. She was assigned separation code JKK, reenlistment code 3, and the narrative reason for separation listed as "Misconduct – Drug Abuse." It also shows she was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Army Good Conduct Medal
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Madge with Rifle Bar (M16)
- Southwest Asia Service Medal with bronze service star (3)
- Kuwait Liberation Medal

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 635-5), 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.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as abuse of illegal drugs, 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.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her other than honorable conditions (general) characterization of service. She contends she experienced Posttraumatic Stress Disorder (PTSD) that mitigates her misconduct. 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 08 March 1989, 2) she served in Germany from 26 September 1989 to 17 January 1992 and in Southwest Asia from 13 December 1990 to 18 April 1991, 3) she received nonjudicial punishment (NJP) on 08 May 1992 for one specification of wrongful use of marijuana, 4) A DA Form 3822 Mental Status Evaluation conducted on 07 May 1992 in conjunction with a separation evaluation indicated the applicant was cleared for administrative action as deemed appropriate by her commander, 5) report of medical examination in-service indicated she was generally in good health, 6) the applicant's self-statement in response to the notification for separation indicated she was unable to present her case during her Article 15 hearing and that there were statements from witnesses casting doubt on the chain of custody for the urinalysis that resulted in a positive sample for the applicant, 7) the applicant was discharged on 02 July 1992 under the provisions of Army Regulation (AR) 635-200, Chapter 14 for abuse of illegal drugs, 8) the applicant received several awards, medals and ribbons during her service, most notably including the Army Good Conduct Medal, Southwest Asia Service Medal with bronze service star, and Kuwait Liberation Medal.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No civilian BH records were available for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service DA 3822 Report of Mental Status Examination conducted on 07 May 1992 indicated the applicant met retention standards in accordance with (IAW) AR 40-501 and did not have a condition that warranted disposition through medical channels. Her in-service SF 88 Report of Medical Examination indicates she was referred to the

ADAPCP for consultation due to her positive urinalysis. There were no other in-service military treatment records available for review.

d. Records were available for review through the VA from 05 March 2019 through 29 May 2024. She first established care through the VA in March 2019 requesting housing assistance. The applicant provided a VA Benefits Decision letter citing that the applicant is 100% service-connected through the VA for PTSD, which is also reflected in JLV. The Disability Benefits Questionnaire (DBQ) completed on 15 February 2021 cited two traumas while in-service. The first occurred while she was deployed to Saudi Arabia in 1991 wherein, she reported she observed someone have a heart attack, was administered CPR, and died after taking a nerve agent pill they were all required to take. The applicant reported her second trauma occurred in 1990 when her New Years Eve date physically assaulted her. It was documented that the military police observed the event and she provided a statement. Per the DBQ, the applicant reported she started using marijuana after her deployment and had no misconduct prior to that time. The applicant is diagnosed with several BH conditions and related concerns through the VA to include homelessness, Other Specified Phobia and Cannabis Abuse with unspecified cannabis-induced disorder, Major Depressive Disorder, Recurrent, Moderate, Anxiety Disorder, Unspecified, and Adjustment Disorder with Mixed Anxiety and Depressed Mood. Since establishing care, she has continued to seek BH treatment through the VA since 2019.

e. The applicant is petitioning the Board to upgrade her Under Honorable Conditions (General) discharge. The applicant contends she had PTSD which mitigates her misconduct. The applicant is 100% service connected through the VA for PTSD and cited two in-service traumas related to her diagnosis. As self-medication with substances is a common form of avoidance for individuals who suffer from PTSD, there is a nexus between her marijuana use and failed urinalysis that led to separation. After applying liberal consideration, the applicant's misconduct is mitigated by her medical condition.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant is 100% service connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD at the time of her discharge and she has been awarded 100% VA service connection for PTSD. Review of her service records indicate the applicant did not have any misconduct prior to her deployment and in fact

had been acknowledged with several awards prior to her positive urinalysis, indicating a change in behavior. There were two traumas that occurred during her time in service that were associated with her PTSD diagnosis from the VA to include witnessing someone die and physical assault. Given that self-medication with substances is a common form of avoidance and avoidance behavior is associated with the natural history and sequelae of PTSD as well as a change in behavior following her deployment, there is a nexus between her symptoms and positive urinalysis leading to her discharge. As such, BH medical mitigation is supported.

BOARD DISCUSSION:

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 2 July 1992 as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to restoration of the grade of E4.



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 635-200 (Personnel Separation – 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 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.

3. 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.

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//