

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230013639

APPLICANT REQUESTS:

- upgrade of her under honorable conditions (general) character of service
- correction of her DD Form 214, (Certificate of Release or Discharge from Active Duty) to show a different narrative reason for separation
- an appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Memorandum for Record, Chapter 10 Request, dated 10 June 1982
- DD Form 214, for the period ending 23 July 1982
- additional statements in support of claim, dated 22 February 1983

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. On 1 April 1982, she and Private First Class (PFC) B.R.M., were falsely accused of physically assaulting PFC P.F. They were escorted from the barracks by Soldiers with loaded M-16s and taken to Mannheim Prison, in Germany, where she was strip searched, given a uniform, and placed in a jail cell. She felt violated, terrified, and ashamed. She cannot say how long she was there, two weeks or a month.

b. The first time she tried to commit suicide was when she was released to her unit. She was falsely accused and labeled a criminal. She felt like she let everyone down. Counsel informed her she risked going back to prison if she did not take a Chapter 10 discharge. She would have never taken it if she knew she would always carry that label.

She knew she was innocent. They never attacked PFC P.F., who changed her statement several times.

c. She would like to clear her name and restore her reputation. She suffered with anxiety, depression, and mistrust of people. She notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to her claim.

3. The applicant enlisted in the Regular Army on 25 June 1981, for a 3-year period. Upon completion of initial entry training, she was awarded military occupational specialty 64C (Motor Transport Operator).

4. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice. However, the relevant DD Form 458 (Charge Sheet) is not available for review.

5. A Release Order of the Military Magistrate, dated 7 April 1982, shows the magistrate ordered the release of the applicant from pretrial confinement. The magistrate determined there was no substantial probability of her flight to avoid trial or that she would commit future serious misconduct.

6. A review of the applicant's medical records determined the applicant was not required to undergo a pre-separation mental evaluation or medical examination.

7. The applicant consulted with legal counsel on 9 June 1982.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting discharge, she was admitting guilt to the charges against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion. She further acknowledged understanding that if her discharge request were approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Veterans Administration, and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised she could submit any statements she desired in her own behalf. On 10 June 1982, Defense Counsel submitted a Memorandum for Record, which was written on behalf of the applicant. Defense Counsel stated:

(1) [The applicant] was being charged with aggravated assault for striking PFC P.F. on the head with a pool cue on 1 April 1982. Evidence indicated PFC P.F.'s injuries were not serious and consisted of two bumps on her head, which did not require medical attention.

(2) She should be granted a Chapter 10 separation with an under honorable conditions (general) discharge. Further evidence showed the co-accused (PFC B.R.M.) was not even present at the alleged assault; the injuries were minor; if convicted, the jury would view it as an Article 15 offense; and her character of service was fair with no Articles 15.

8. On 11 June 1982, the applicant's immediate commander recommended approval of the request for discharge for the good of the service, stating the applicant continued to be an adverse influence on the good order and discipline of the command.

9. The applicant's intermediate commanders recommended approval of the request for discharge for the good of the service, further recommending the issuance of a general discharge.

10. On 22 June 1982, the separation authority approved the applicant's request for discharge, directed the applicant be reduced to private/E-1, and the issuance of a General Discharge Certificate.

11. The applicant was discharged on 23 July 1982, under the provisions of AR 635-200, Chapter 10, by reason of administrative discharge - conduct triable by court-martial. Her DD Form 214 confirms her service was characterized as under honorable conditions (general), with separation code JFS and reenlistment code RE-3. She was credited with 1 year and 29 days of net active service.

12. The Army Discharge Review Board reviewed the applicant's request for a discharge upgrade on or about 2 November 1983. After careful consideration, the Board determined the applicant was properly and equitably discharged. Her request was denied.

13. The applicant provides additional statements, dated 22 February 1983, wherein she points out the inconsistencies in the sworn statements, provided by others, at the time of her alleged misconduct.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial.

15. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 10, "for the good of the service - in lieu of court-martial" separation code JFS is the appropriate narrative reason.

16. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting upgrade of her under honorable conditions (general) discharge to honorable and a change in the narrative reason for separation. The applicant contends PTSD and OMH 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 in the Regular Army on 7 April 1982.
- Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice. However, the relevant DD Form 458 (Charge Sheet) is not available for review.
- The applicant consulted with legal counsel on 9 June 1982. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting discharge, she was admitting guilt to the charges against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.
- On 10 June 1982, Defense Counsel submitted a Memorandum for Record, which was written on behalf of the applicant. Defense Counsel stated: [the applicant] was being charged with aggravated assault for striking PFC P.F. on the head with a pool cue on 1 April 1982. Evidence indicated PFC P.F.'s injuries were not serious and consisted of two bumps on her head, which did not require medical attention.
- On 11 June 1982, the applicant's immediate commander recommended approval of the request for discharge for the good of the service, stating the applicant continued to be an adverse influence on the good order and discipline of the command.
- Applicant was discharged on 23 July 1982, under the provisions of AR 635-200, Chapter 10, by reason of administrative discharge - conduct triable by court-

martial. Her DD Form 214 confirms her service was characterized as under honorable conditions (general), with separation code JFS and reenlistment code RE-3. She was credited with 1 year and 29 days of net active service.

- ADRB reviewed the applicant's request for a discharge upgrade on or about 2 November 1983. After careful consideration, the Board determined the applicant was properly and equitably discharged. Her request was denied.

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 states, "on 1 April 1982, she and Private First Class (PFC) B.R.M., were falsely accused of physically assaulting PFC P.F. They were escorted from the barracks by Soldiers with loaded M-16s and taken to Mannheim Prison, in Germany, where she was strip searched, given a uniform, and placed in a jail cell. She felt violated, terrified, and ashamed. She cannot say how long she was there, two weeks or a month. The first time she tried to commit suicide was when she was released to her unit. She was falsely accused and labeled a criminal. She felt like she let everyone down. Counsel informed her she risked going back to prison if she did not take a Chapter 10 discharge. She would have never taken it if she knew she would always carry that label. She knew she was innocent. They never attacked PFC P.F., who changed her statement several times. She would like to clear her name and restore her reputation. She suffered with anxiety, depression, and mistrust of people. She notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to her claim."

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no electronic medical records were available for review. There is no evidence of the applicant receiving treatment for any BH condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates her discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant self-asserts mitigating conditions of PTSD and OMH.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after her discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is no evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating she has been treated for any mental health condition. In addition, the applicant provides no post-service medical documentation substantiating her assertion of anxiety and depression. In her statement the applicant indicates she experienced "anxiety, depression, mistrust of others" as a result of being incarcerated. This experience occurred after her crime of aggravated assault and would not provide mitigation for her misconduct. However, regardless of diagnosis, neither PTSD, anxiety, nor depression would provide mitigation for her misconduct. None of these BH conditions have a natural history or sequelae with aggravated assault, nor do they impact the capacity to distinguish right from wrong and act in accordance with the right.

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.

a. Discharge upgrade: Deny. 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. The evidence shows the applicant was charged with commission of an offense (assault) punishable under the UCMJ with a punitive discharge. After being charged, she consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. Nevertheless, the applicant received a general discharge. The Board found no error or injustice in her separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: Deny. The Board noted that the applicant's narrative reason for separation was assigned based she was separated under the

provisions of chapter 10 of AR 635-200. She committed a UCMJ violation and when court-martial charges were preferred against her, she chose the voluntary discharge in lieu of trial by a court-martial in accordance with chapter 10 of AR 635-200. The underlying reason for her discharge was her request for voluntary discharge in lieu of trial by court-martial under chapter 10. The only valid narrative reason for separation permitted under chapter 10 of AR 635-200 is "in Lieu of Trial by Court-Martial." The Board found no error or injustice in the reason for her separation and the applicant did not provide a convincing reason to change it.

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.

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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, 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. 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:
 - a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.
 - b. 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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

5. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code KFS (JFS) and the narrative reason "for the good of the service - in lieu of court-martial" are appropriate to assign to Soldiers separated under the provisions of AR 635-200, Chapter 10.

6. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

7. 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, 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.

//NOTHING FOLLOWS//