

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230013641

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge to honorable
- 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)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 27 November 1979

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 planned on making the military a career, but that was taken from her because she could not handle the sexual assault and subsequently went absent without leave (AWOL).

a. She entered the Army in December 1978 and had full intentions of making the Army a career and retiring. Shortly after her enlistment, she was repeatedly sexually abused and told that no one would believe her over him. Her depression, pregnancy, and lack of trust and faith in anyone led her to go AWOL. She returned to continued sexual abuse, but was hopeful when she was informed that she would be transferred to Aberdeen Proving Ground, MD. Later she learned she was 1 of 8 women on the base and was verbally harassed by the men and told she was the only "straight woman" on the base and all other women were gay. She had already endured significant trauma and was scared that more sexual abuse would occur which led her to go AWOL again.

b. Her hopes and dreams were gone, and she was left with trust issues which remain to date. She has been on medication and hospitalized multiple times for suicidal ideations and severe depression. She drank quite a bit in the past 45 years. She believes if she had not ensured sexual abuse, she would have retired from the military, but because of a sexual predator and his abuse when she was 18 years old, her future was taken from her. Due to mitigating circumstances at the time of her separation, she respectfully requests the upgrade from under other than honorable conditions discharge to honorable. She has suffered enough and was subjected to sexual assault as a young kid, which caused her to remove herself from the situation by going AWOL. She is certain she was not his first victim. Additionally, she was unable to get supporting medical documents because the facility she was treated only goes back 5 to 7 years.

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

a. She enlisted in the Regular Army on 4 December 1978.

b. Her DA Form 2-1 (Personnel Qualification Record – Part II) shows two periods of AWOL:

- 4 March 1979 to 12 March 1979 (9 days)
- 22 April 1979 to 28 August 1979 (129 days)

c. On 23 March 1979 she accepted nonjudicial punishment for one specification of AWOL from on or about 4 March 1979 to on or about 13 March 1979.

d. A DD Form 458 (Charge Sheet) shows on 4 September 1979, court-martial charges were preferred on the applicant for one specification of AWOL from on or about 22 April 1979 to on or about 29 August 1979.

e. On 4 September 1979, the applicant underwent a medical examination for the purpose of separation which indicated she was in fair health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. On 5 September 1979, after consulting with legal counsel she requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. She acknowledged:

- maximum punishment
- she was guilty of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service

- if her request for discharge was accepted, she may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- she may expect to encounter substantial prejudice in civilian life
- she elected to submit matters

g. A rebuttal statement from the applicant which states she joined the U.S Army because she wanted to represent the country and it was an opportunity to attend school. She was serving as a security guard and working up to investigations which led her to join the military police (MP) to get more experience without having to pay out of pocket. She attended AIT for military occupational specialty (MOS) 91B, and the course was very unorganized. She wants out of the Army due to the gay women. Upon entering the military, she was required to sign a contract that indicated she was not gay. Fort Knox, KY was the only installation where she had not run into gay women and she had spoken to four. She has seen many gay women reclassified instead of discharged and if they do not have to live up to the contract they signed, she feels she should not have to.

h. On 2 November 1979, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. She would be issued an under other than honorable discharge and reduced to the lowest enlisted rank of private (E-1).

i. On 27 November 1979, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she completed 7 months and 8 days of active service with 138 days of lost time. She was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge – conduct triable by court-martial," with reentry code 3. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Sharpshooter Marksmanship Qualification Badge with Pistol Bar (.38 Cal)

5. On 10 July 2024, the Department of the Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's sexual assault and a criminal investigation report was provided. The report of investigation (ROI) states in part, an investigation revealed that on an unknown date during March 1979 [Redacted Name] committed the offense of lewd and indecent acts by fondling the applicant's breast against her will while in the bay area. The applicant also reported numerous incidents of lewd and indecent acts with other Soldiers.

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

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Other Than Honorable Conditions. She indicated that Sexual Assault/Harassment was related to her request. She indicated that she went absent without leave (AWOL) as a result of sexual assault.

b. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the U S Army Reserve 11Aug1978, and her first period of active service began on 04Dec1978. Her MOS was 95B Military Police (?). She was discharged under provisions of AR 635-200 chapter 10 in lieu of trial by court-martial on 27Nov1979. The charge sheet showed one specification, she was absent without authority from 19790422 to 19790829. Her service was characterized as Under Other Than Honorable Conditions.

c. The applicant stated at the time, that her reason for discharge was related to discovery of a number of gay women in the Army, and they were reclassified rather than discharged. In the 19Jul1979 CID Report of Investigation, it was documented that in March 1979 the applicant was sexually assaulted. Documents in the investigation evidence note statements by the applicant (28Mar1979 and 15Apr1979) in which she reportedly related information pertaining to homosexual acts within her unit/between others.

d. In a 20Jul2023 Mental Health Consult VAMC visit, the applicant described the impact of MST forty years prior involving a superior (and resulted in pregnancy and miscarriage) that she was too afraid to report; and domestic violence (physical and sexual) in a long-term marriage which produced multiple children. She reported having tried all different kinds of medications in the past, including anti-psychotics but nothing worked.

e. The 04Sep1979 Report of Medical Exam (SF 88) for separation did not show abnormalities in the physical exam. She reported having missed 2 periods and not being on birth control. Although the applicant indicated that she was in very good health, she endorsed (on the SF 93 Report of Medical History) multiple physical symptoms as well as behavioral health symptoms (attempted suicide, depression or excessive worry, and nervous trouble of any sort).

f. Liberal Consideration guidance was considered. Military sexual trauma (MST) was documented in the applicant's contemporaneous military record. Under Liberal Consideration, MST is mitigating for the AWOL offence which led to her chapter separation from service.

g. Kurta Questions:

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

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant's MST was documented.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant experienced MST which is mitigating for her AWOL offense. The applicant endorsed multiple BH symptoms during medical evaluation for her separation. In addition to symptoms noted above, MST can be associated with issues of not feeling safe, wanting to isolate from others or avoid negative thoughts or situations. This can directly contribute to a decision to go AWOL.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting herself from her unit from 22 April

1979 to 29 August 1979, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board reviewed and concurred with the medical advisor's review finding credible evidence to support the applicant experienced military sexual trauma that was reported and documented in her record. This trauma can be associated with issues of not feeling safe, wanting to isolate from others or avoid negative thoughts or situations and can contribute directly to a decision to absent themselves from their unit. The Board determined relief was appropriate in relation to the applicant's specific request to upgrade her characterization of service. Additionally, the Board concluded the separation authority, separation code, reenlistment code, and narrative reason for separation will be amended to reflect Secretarial Authority with corresponding codes.

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 Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 27 April 1979 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

■

■ ■

■

■

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Army Regulation 635-200 (Personnel Separations – 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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//