

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013851

APPLICANT REQUESTS: Upgrade of her under honorable conditions (general) discharge based on disability.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) decision letter

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 her discharge was inappropriate; she should have been medically boarded. Her symptoms were ignored by her chain of command. She was kicked out when she was only given a week to get back to work after her assault.
3. On her DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), other mental health, and sexual assault/harassment issues are related to her request.
4. On 28 April 2014, the applicant enlisted in the Regular Army for 4 years. Upon completion of training, she was awarded military occupational specialty 68W (Health Care Specialist). The highest grade she attained was E-4.
5. The applicant received formal counseling on the following dates/for:
 - 19 December 2014; missing formation
 - 23 January 2015; not assisting a patient prior to going to lunch
 - 29 July 2015; missing formation
 - 6 August 2015; patterns of lateness
 - 22 September 2015; missing formation
 - 21 October 2015; failing a record Army physical fitness test

- 22 October 2015; no show for two appointments
- 17 December 2015; failing to report and violating of a no-contact order
- 18 December 2015; failing to remain at her appoint place of duty
- 30 December 2015; failing to appear of barracks clean-up
- 5 January 2016; failing to report and indebttness
- 5 April 2016; lying to a noncommissioned officer and missing barracks inspection
- 14 April 2016; failing to report
- 23 May 2016; failing to report
- 26 May 2016; failing to report

6. On 10 June 2016, the applicant underwent a mental status evaluation. She was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

7. On 20 July 2016, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to go at the time prescribed to her appointed place of duty on ten occasions between on or about 19 December 2014 and on or about 25 May 2016; for disobeying a lawful order, on or about 16 December 2015; and making a false official statement to a noncommissioned officer, on or about 5 April 2016. Her punishment included reduction to E-1, and 14 days restriction and extra duty.

8. The applicant received additional counseling on the following dates/for:

- 27 July 2016; failing to report
- 9 August 2016; missing barracks cleanup
- 15 August 2016; lying to a noncommissioned officer
- 25 August 2016; failing to report

9. On 26 September 2016, the applicant's commander notified her that she was initiating action to separate the applicant under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14-12b, for a pattern of misconduct. As the specific reasons, her commander cited the applicant for failing to report on multiple occasions, violating a lawful order from a commissioned officer, and making false statements.

10. On 27 September 2016, the applicant acknowledged that she had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to her.

a. She indicated she understood she could expect to encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to her.

b. She elected to submit a statement in her own behalf, stating that during her short time in Germany, she dated someone for a year that abused her verbally, emotionally, and eventually physically. She believed that her positive actions should be balanced and recognized just as much as her downfalls. She asked for the opportunity to be a medic in a line unit and get a different aspect of leadership in the Army.

11. On 11 October 2016, the applicant's commander formally recommended her separation under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct.

12. The separation authority approved the recommended discharge on 19 October 2016, with the applicant's service characterized as under honorable conditions (general).

13. The applicant was discharged on 15 November 2016. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b. She was discharged in the lowest enlisted grade and her service was characterized as under honorable conditions (general). She completed 2 years, 6 months, and 18 days of net active service this period.

14. The applicant petitioned the Army Discharge Review Board requesting upgrade of her under honorable conditions (general) discharge. On 7 March 2018, the Board voted to deny relief and determined her discharge was both proper and equitable.

15. In the processing of the applicant's previous case, a search of the U.S. Army Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

16. The applicant provides a VA decision letter that shows she was granted service connection for PTSD with social phobia with an evaluation of 100 percent. This letter is provided in its entirety for the Board's review within the supporting documents.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her discharge and a referral to IDES. She contends she experienced sexual assault/harassment, mental health conditions, including PTSD that mitigate her misconduct and warrant a

medical discharge. 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 28 April 2014; 2) On 20 July 2016, the applicant accepted non-judicial punishment for failing to go at the time prescribed to her appointed place of duty on ten occasions between 19 December 2014 and 25 May 2016; for disobeying a lawful order on 16 December 2015; and making a false official statement to a noncommissioned officer on 5 April 2016; 3) The applicant continued to receive additional counselings for similar misconduct between 27 July-25 August 2016; 4) The applicant was discharged on 15 November 2016, Chapter 14-12b-pattern of misconduct. She was discharged in the lowest enlisted grade and her service was characterized as under honorable conditions (general).

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also examined.

c. The applicant asserts she experienced sexual assault/harassment, mental health conditions including PTSD while on active service, which mitigates her misconduct and warranted a medical discharge. The applicant did engage in behavioral health treatment in early November 2015 following an assault from another Soldier, who was an intimate partner. She required hospital care from the assault due to a broken rib and an injured spleen. During her initial behavioral health appointment, the applicant reported a childhood history of trauma including sexual trauma. She was initially diagnosed with spousal or partner abuse and then later during her course of individual therapy with an Adjustment Disorder. The applicant saw the same provider for a total of 19 sessions with their last session in August 2016. However, the applicant regularly canceled her appointments or did not show up. Her provider wanted to work with the applicant on her history of trauma with evidence-based treatment, but the applicant did not want to engage in that type of treatment. Therefore, the focus of the therapy was on assisting her manage her occupational problems, stress, and plan for her discharge. The applicant was seen in September 2016 by a prescribing behavioral health provider, who saw her for three medication management appointments, diagnosed her with PTSD, and prescribed her psychiatric and sleep aid medication. The applicant was not placed on a temporary or permanent psychiatric profile or required inpatient psychiatric hospital treatment for PTSD or another mental health condition during her active service.

d. On 10 June 2016, the applicant was provided a Mental Status Exam as part of her administrative separation proceedings. She was screened at that time for PTSD and a traumatic brain injury. The applicant reported looking forward to getting out of the Army, and she described her primary problem as difficulty sleeping. She was found to meet medical retention standards IAW AR40-501 and was fit for duty from a psychiatric perspective. She was not diagnosed with PTSD by that provider, and she was cleared for chapter separation and not referred for an MEB.

e. A review of JLV provided evidence the applicant began to engage with the VA for assistance for homelessness starting in January 2017. Later in July 2023, the applicant was diagnosed with service-connected PTSD (100%SC) related to her assault while on active service and her history of trauma.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates her misconduct, but there is insufficient evidence her case warrants a referral to IDES.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced sexual assault/harassment, mental health conditions including PTSD which mitigates his misconduct and warrants a referral to IDES. There is sufficient evidence the applicant was exposed to intimate partner violence while on active service, and she was diagnosed with Adjustment Disorder and later PTSD. In addition, she has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced sexual assault/harassment, mental health conditions including PTSD which mitigates his misconduct and warrants a referral to IDES. There is sufficient evidence the applicant was exposed to intimate partner violence while on active service, and she was diagnosed with Adjustment Disorder and later PTSD, while on active service. In addition, she has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant was exposed to intimate partner violence while on active service, and she was diagnosed with Adjustment Disorder and later PTSD as a result of her childhood trauma and her experience. In addition, she has been diagnosed by the VA with service-connected PTSD. There is a natural sequelae between the applicant's erratic and at times avoidant behavior and PTSD and intimate partner violence. However, there is insufficient evidence the applicant was ever found to not meet retention standards from a psychiatric perspective while on active service. There was also insufficient evidence the applicant was ever placed on a temporary or permanent psychiatric profile or warranted inpatient psychiatric treatment. Therefore, there is insufficient evidence her case warrants a referral to IDES at this time.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct, and the reason for her separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor.
2. The Board concurred with the conclusion of the medical advising official regarding her misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.
3. The Board further concurred with the medical advising official's conclusion that the applicant did not have any conditions prior to her discharge that would have been a basis for referring her to the Disability Evaluation System. The Board determined the reason for her discharge was not in error or unjust.

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 reissuing her DD Form 214 to show her character of service as honorable.
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 separation for disability.

12/26/2024

X 

CHAIRPERSON


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, U.S. Code, 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. Army Regulation 635-5-1 (Separation Program Designator (SPD) 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. At the time,

this regulation prescribed the separation code "JKA" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for pattern of misconduct.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 14, paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline. The issuance of a discharge under other than honorable conditions is normally considered appropriate for separations under the provisions of Chapter 14.

(1) The separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(2) 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. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The

memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//