

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230014258

APPLICANT REQUESTS: her bad conduct discharge be upgraded to honorable, and a change of the narrative reason for separation to Secretarial Authority with the corresponding separation and reentry eligibility (RE) codes.

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Service Documents and Medical Documents (Exhibits 1-3 and 6-28)
- Character Letters (three)

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. Counsel states:

a. The applicant enlisted at the age of 19 years old. She served 8 years, 7 months, and 21 days. She was discharged following the adjudication of a General Court Martial. She deployed twice and achieved awards and achievements. During her first deployment she suffered from a fall that had lasting impacts on her health. She was working on a gun atop a HUMVEE vehicle when the driver started driving off and the applicant fell 8 feet onto her back while wearing her full kit. She refused treatment at the time and denied any injury but over the following five years she experienced chronic knee, back, and head pain that forced her to seek help.

b. The applicant experienced traumatic events that severely affected her physical and mental health in the years after. The most harrowing events included: pulling an injured Soldier from a vehicle to recover their weapon, a Soldier was kidnapped from her camp by Iraqi nationals, and the applicant had to repair weapons amid active

firefights. She had to remove and repair the weapon of an injured Soldier during combat and upon removing the weapon from the Soldier's grip she could see their intestines and organs spilling out from the vest. The applicant had to clean the skin fragments off the weapon before repair.

c. When she returned from her second deployment, she was reluctant to reveal the extent of her physical injuries or post-traumatic stress disorder (PTSD) symptoms. She admitted falling during deployment, feeling dizzy, not remembering the event, her ears ringing, back pain, and sensitivity to light. She had a negative traumatic brain injury (TBI) screen because she denied hitting her head, going unconscious without memory, or suffering from any injuries at all.

d. In 2010 she first reported insomnia and feelings of depression. A behavioral health appointment was made; however, the applicant did not show up. In 2011 she went to her first behavioral health appointment where she was prescribed Lunesta for insomnia and Zoloft for depression symptoms. The applicant said she did not want to take the Zoloft. She stated, "I feared coming here because they really don't want you to," signifying her fear of publicizing her mental health to her command.

e. The applicant's chain of command made a material error of discretion by giving her an unduly harsh characterization of service considering her undiagnosed PTSD and other ailments. Not only this, but she has been able to rehabilitate and be a contributing member of society. As such, the applicant should be granted relief.

3. The applicant enlisted in the Regular Army on 18 January 2005 for a period of 4 years. Her military occupational specialty was 91F (Small Arms/Artillery).

4. The applicant served in Iraq from 14 September 2006 to 5 November 2007 and 5 May 2009 to 5 May 2010.

5. The applicant reenlisted in the Regular Army on 29 August 2007.

6. Noncommissioned Officer Evaluation Reports for the periods ending 31 July 2007 and 31 July 2012 show the applicant should be promoted with staff sergeant/E-6 peers, had outstanding performance, displayed unlimited potential, and should be assigned positions with increased responsibilities.

7. The Report of Result of Trial shows before a general court martial at Fort Bragg, NC on 30 January 2013 and 7 May 2013 the applicant was found guilty of:

- without authority, failing to go at the time prescribed to her appointed place of duty on or about 10 May 2012 until on or about 8 January 2013

- on divers occasions between on or about 10 May 2012 and on or about 7 January 2013 with intent to deceive, make to her chain of command official statements on a sick call slip which were false in that [REDACTED] did not create or sign the documents, and were then known by the applicant to be false
- on divers occasions between on or about 10 May 2012 and on or about 7 January 2013 steal money, military property, of a value greater than \$500.00, the property of the United States

8. The Confinement Order, dated 7 May 2013, shows the applicant was sentenced to reduction to private/E-1, forfeiture of all pay and allowances, confinement for three months and to receive a bad conduct discharge. The applicant would be placed on excess or appellate leave upon release from confinement.

9. The applicant was confined by military authorities on 9 May 2013.

10. The applicant was discharged on 12 August 2015. Her DD Form 214 shows she was discharged under the provisions of Army Regulation (AR) 635-200 (Active-Duty Administrative Separations), Chapter 3, as a result of court-martial (other) with Separation Code JJD and Reentry Code 4. Her service was characterized as bad conduct. She completed 9 years, 8 months, and 15 days of net active service. She lost time from 10 May 2012 to 7 January 2013 and 9 May 2013 to 20 July 2013. Her awards include the:

- Iraq Campaign Medal with two campaign stars
- Army Commendation Medal (2nd award)
- Army Achievement Medal
- Army Good Conduct Medal (2nd award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon (2nd award)
- Overseas Service Ribbon

11. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

12. AR 635-5 (Separation Documents), 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.

13. The applicant provides the following available in entirety for the Boards review:

- a. A copy of her DD Form 214 as discussed above.
- b. Exhibits 1-2, 32-37, and 38-39-includes service documents as discussed above.
- c. Exhibits 3 and 6-32-includes service medical documents which show history of concussion, memory lapses, adjustment disorder with anxiety and depressed mood, blurry vision and dizziness, screening for TBI, and medications as discussed above.
- d. Exhibits 5, 36-37-character letters that attest to the applicant's integrity being beyond reproach, being a quick learner, very knowledgeable and familiarized with all regulations of the U.S. Army. She worked out of her military skill and was able to adapt and have a great impact on unit readiness in preparation for combat deployment. The applicant led by example, was goal oriented and had a relentless focus to surpass the goals she sets. She had the ability to build morale. The applicant is intelligent, energetic, competent, and always commanded respect from both her peers and superiors just like she respected them.

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

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her bad conduct discharge to honorable, and a change of the narrative reason for separation to Secretarial Authority with the corresponding separation and reentry eligibility (RE) codes. The applicant contends her discharge is mitigated by post-traumatic stress disorder (PTSD), OMH, and TBI.

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 into the Regular Army on 18 January 2005 and reenlisted on 29 August 2007.
- The applicant served in Iraq from 14 September 2006 to 5 November 2007 and 5 May 2009 to 5 May 2010.
- Noncommissioned Officer Evaluation Reports for the periods ending 31 July 2007 and 31 July 2012, show the applicant should be promoted with staff sergeant/E-6 peers, had outstanding performance, displayed unlimited potential, and was recommended for positions with increased responsibilities.
- The Report of Result of Trial dated 9 May 2013 shows before a general court martial at Fort Bragg, NC the applicant was found guilty of:

- on divers occasions between on or about 10 May 2012 and on or about 7 January 2013, steal money, military property of a value greater than \$500.00, the property of the United States
- on divers occasions between on or about 10 May 2012 and on or about 7 January 2013 with intent to deceive, make to her chain of command, official statements on a sick call slip and on a memorandum for CVL (central venous line), which were false in that [REDACTED] (the medical provider) did not create or sign the documents, and were then known by the applicant to be false
- without authority, absent herself from her unit on or about 10 May 2013 and did remain so absent until on or about 12 July 2017, and on or about 13 July 2012 and did remain so absent until on or about 19 July 2012, and on or about 20 July 2012 and did remain so absent until on or about 25 July 2012, and on or about 26 July 2012 and did remain so absent until on or about 27 July 2012, and on or about 28 July 2012 and did remain so absent until on or about 1 August 2012, and on or about 2 August 2012 and did remain so absent until on or about 20 September 2012, and on or about 22 September 2012 and did remain so absent until on or about 7 December 2012, and on or about 8 December 2012 and did remain so absent until on or about 8 January 2013.
- The Confinement Order, dated 7 May 2013, shows the applicant was sentenced to reduction to private/E-1, forfeiture of all pay and allowances, confinement for three months and to receive a bad conduct discharge. The applicant would be placed on excess or appellate leave upon release from confinement.
- The applicant was discharged on 12 August 2015. Her DD Form 214 shows she was discharged under the provisions of Army Regulation (AR) 635-200 (Active-Duty Administrative Separations), Chapter 3, as a result of court-martial (other) with Separation Code JJD and Reentry Code 4. Her service was characterized as bad conduct. She completed 9 years, 8 months, and 15 days of net active service. She lost time from 10 May 2012 to 7 January 2013 and 9 May 2013 to 20 July 2013.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states via counsel, "she was discharged following the adjudication of a General Court Martial. She deployed twice and achieved awards and achievements. During her first deployment she suffered from a fall that had lasting impacts on her health. She was working on a gun atop a HUMVEE vehicle when the driver started driving off and the applicant fell 8 feet onto her back while wearing, her full kit. She refused treatment at the time and denied any injury but over the following five years she experienced chronic knee, back, and head pain that forced her to seek help." She "experienced traumatic events that severely affected her physical and mental health in the years after. The most harrowing events included: pulling an injured Soldier from a vehicle to recover their weapon, a Soldier was kidnapped from her camp by Iraqi nationals, and the applicant had to repair weapons amid active firefights. She had to

remove and repair the weapon of an injured Soldier during combat and upon removing the weapon from the Soldier's grip she could see their intestines and organs spilling out from the vest. The applicant had to clean the skin fragments off the weapon before repair. When she returned from her second deployment, she was reluctant to reveal the extent of her physical injuries or post-traumatic stress disorder (PTSD) symptoms. She admitted falling during deployment, feeling dizzy, not remembering the event, her ears ringing, back pain, and sensitivity to light. She had a negative traumatic brain injury (TBI) screen because she denied hitting her head, going unconscious without memory, or suffering from any injuries at all. In 2010 she first reported insomnia and feelings of depression. A behavioral health appointment was made; however, the applicant did not show up. In 2011 she went to her first behavioral health appointment where she was prescribed Lunesta for insomnia and Zoloft for depression symptoms. The applicant said she did not want to take the Zoloft. She stated, "I feared coming here because they really don't want you to," signifying her fear of publicizing her mental health to her command."

d. Active-duty electronic medical records available for review indicate that on 1 June 2010, the applicant was seen by medical and diagnosed with insomnia and prescribed psychotropic medication for her symptoms. On 9 July 2010, she was screened for TBI, but no symptoms were reported by the applicant. The applicant presented to medical on 5 November 2010 complaining of chronic lower back pain for nearly 5 years with worsening symptoms. An MRI was completed and revealed no abnormality. In addition, the applicant complained of feeling depressed and insomnia. Behavioral health services were recommended, and the applicant was referred for a mental health assessment but did not attend her scheduled appointment and did not respond to attempts at outreach. On 4 March 2011, the applicant presented to behavioral health and on an intake form, endorsed sadness, irritability, anger, loneliness, insomnia, fatigue, sexual problems, helplessness, and issues with her appetite. She reported severe back and knee pain related to a deployment injury where her head hit the ground when she fell out of a vehicle, and her helmet came off. The clinician referred the applicant for a TBI assessment. The record indicates the applicant was already prescribed medication for her depression and insomnia by her primary care physician.

e. A consultation dated 11 March 2011, indicates the applicant reported depression for over three years but had not sought therapy because she was afraid the Army would "blackball" her. On 1 April 2011 she participated in an intake appointment with behavioral health and was diagnosed with Adjustment Disorder with Mixed Emotional Features. Once again, the applicant reported fear of the impact participating in behavioral health services could have on her career. On 25 May 2011, the applicant participated in a psychiatry appointment and was diagnosed with Adjustment Disorder with Depressed Mood. The applicant continued receiving both individual therapy and medication management and her records indicate she was diagnosed with Depression.

The applicant discontinued treatment abruptly in October 2011 and then presented on 7 February 2012 reporting fatigue, anxiety, depression, sleep disturbance and problems both at work and at home. She was diagnosed with Major Depression, recurrent. Both individual therapy and medication management was recommended. A psychiatry appointment on 27 March 2012 diagnosed her with Major Depression, recurrent, and Insomnia. The applicant was seen by behavioral health on 14 January 2013, and reported she responded well to her medication but stopped taking them in September 2012 because she felt she did not need them anymore. However, was now presenting and endorsing depressed mood, anxiety, insomnia, decreased appetite, decreased concentration, decreased motivation, fatigue, anxiety, hypervigilance, flashbacks, and irritability. The applicant was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood and Rule-out of PTSD; indicating the clinician found symptoms of PTSD, but the applicant did not meet full criteria at that time. During this appointment the applicant once again reported she sustained a concussion during her first deployment and was asked to follow up regarding a potential TBI but did not as she wanted to "tough it out and stay in". She further reported worsening headaches, as well as dizziness and loss of balance on two occasions; she was referred to Neurology for an evaluation.

f. On 23 April 2013, the applicant was seen in the Concussion Care Clinic and once again reported "working on the top of a Humvee when the driver started moving the vehicle, she fell off approximately 8 feet. She had her helmet on, but it was loose. She was told that she lost consciousness for a brief amount of time. When she awoke, she had a severe headache and her back hurt". During this appointment the applicant's migraine headaches, history of concussion, and sleep disturbances, were noted and she was diagnosed with an Adjustment Disorder with Anxiety And Depressed Mood. A case management note dated 30 April 2013 indicates the applicant transitioned her care to a civilian provider.

g. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of her discharge.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, deployment to a combat zone, and subsequent mental health condition during military service that partially mitigates her discharge.

i. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The service record indicates the applicant served in Iraq from 14 September 2006 to 5 November 2007 and 5 May 2009 to 5 May 2010. The applicant was diagnosed with Adjustment Disorder, Major Depression, and Insomnia while in military service and was evaluated due to a reported TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was court martialed due to being repeatedly AWOL, creating and providing to her chain of command false official medical statements, and larceny. Given the nexus between PTSD/depression and avoidance, the applicant's multiple instances of AWOL are mitigated by her BH condition. However, the applicant's BH conditions do not mitigate her creating and providing false medical statements to her chain of command nor does it mitigate the theft/larceny. Neither theft nor lying are part of the history or natural sequelae of any of the applicant's BH conditions. In addition, the repeated pattern of her misconduct, along with the forethought required to create the false documents with a specific medical provider's signature, indicates that this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, conscious decisions. In addition, even if PTSD, depression, and TBI symptoms were present at the time of her misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

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 counsel's statement, the applicant's record of service to include deployment, the frequency and nature of the applicant's misconduct, and the reason for her separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding her misconduct being only partially mitigated by her mental health conditions. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation 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:

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.

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, 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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 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 3 provided that an enlisted person would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

b. Block 25 (Separation Authority), enter the regulatory or other authority cited in the directives authorizing the separation.

c. Block 26 (Separation Code) Obtain correct entry from AR 635-5-1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. Block 27 (Reentry Code) AR 601–210 (Active and Reserve Components Enlistment Program) determines RA and USAR reentry eligibility and provides regulatory guidance on the RE codes.

e. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

6. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

7. 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 Service 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; 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.

8. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

9. On 4 April 2024, 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 eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat-or military sexual trauma-related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//