

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230014426

APPLICANT REQUESTS: in effect, an upgrade of her bad conduct discharge (BCD).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) (Application for Correction of Military Record), 13 September 2023

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, in effect, she wants to work with service members who comeback and need care and with the discharge she currently has she is unable to assist those needing help. She additionally would like to further her education.
3. On her DD Form 293, the applicant indicates post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), other mental health, and sexual assault/harassment are related to her request.
4. The applicant enlisted in the Regular Army on 12 June 1997, for a 4-year period. She extended her enlistment for a period of 1 year and 4 months, on 27 January 1999, to meet the service remaining requirement for an overseas tour to Germany. She also reenlisted on 26 October 2001, and again on 18 March 2004 for a 4-year period.
5. She was awarded the military occupational specialty of 42A (Human Resources Specialist) and the highest rank she attained was specialist/E-4.
6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review.

7. Her record is void of Special Court Martial Order Number 6, dated 1 September 2005, showing her violations of the UCMJ, which include charges and specifications. However Special Court Martial Order Number 4, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, dated 10 January 2008 shows:

a. The findings of guilty were affirmed and she was sentenced to reduction to the grade of E-1, forfeiture of \$820.00 pay per month for five months, confinement for five months, separation from service with a BCD. The sentence was adjudged on 2 June 2005.

b. The record was forwarded for appellate review; however, the appellate review is not available in the applicant's official military personnel file.

c. The sentence was finally affirmed, the provisions of Article 71(c) had been complied with, and the sentence of a BCD was ordered duly executed.

8. The applicant was discharged on 7 April 2008, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, by reason of court-martial, in the grade of E-1. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms her service was characterized as bad conduct with separation code JJD and reentry code 4. She was credited with 10 years, 5 months, and 5 days of net active service, with lost time from 2 June 2005 to 22 October 2005. The Remarks Block of her DD Form 214:

- listed her immediate reenlistment and that she completed her first term of service
- did not list her continuous honorable service (for first enlistment)
- indicated she was on excess leave from 22 November 2005 to 7 April 2008 (868 days)

9. The Army Review Boards Agency (ARBA), Case Management Division, sent the applicant a letter on 21 March 2024, requesting additional medical documentation to support her contention of PTSD, other mental health, and TBI. To date, no additional documentation has been received.

10. On 23 April 2024, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Sexual Assault records pertaining to the applicant.

11. 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.

12. Regulatory guidance provides a Soldier will receive a BCD pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her 7 April 2008 bad conduct discharge. She has indicated on his DD form 293 that PTSD, TBI, Other mental health conditions, and Sexual assault/harassment are issues related to his request. She states: "9/11, and spousal abuse, depression, anxiety."

c. The Record of Proceedings and previous ABCMR denial outline the applicant's military service and the circumstances of the case. The applicant's DD 214 shows she entered the Regular Army on 12 June 1997 and was discharged on 7 April 2008 under the separation authority provided by chapter 3 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Court-Martial. The separation code JJD denotes "Court Martial (Other). There are no periods of service in a hazardous duty pay area.

d. A Special General Court-Martial Order 10 January 2008 shows the applicant was found guilty of multiple unknown specifications.

e. No medical documentation was submitted with the application. The EMR contains no mental health related encounters or diagnoses. JLV shows the applicant is not registered with the VA.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Applicant asserts PTSD, TBI, other mental health conditions, and Military Sexual Trauma

(2) Did the condition exist or experience occur during military service? YES: Applicant asserts PTSD, TBI, other mental health conditions, and Military Sexual Trauma

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: There was no probative evidence submitted, found in AHLTA or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. In addition, without knowledge of the applicant's misconduct, it is unknown if the conduct would even be mitigatable under liberal consideration policies.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. 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.

a. The specific charges and/or specifications for which she was convicted are unknown since the court-martial order that adjudged her sentence is not available. However, other evidence shows she was found guilty and was convicted by court martial for violating the UCMJ and the court sentenced her to reduction to the grade of E-1, forfeiture of pay, confinement for five months, and separation from service with a bad conduct discharge. The applicant's conviction and discharge were presumably conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which she was convicted. The appellate review was completed, and the affirmed sentence was ordered duly executed. The Board found no error or injustice in the available separation processing.

b. 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 determination finding that there was no probative evidence submitted, found in the medical records or other records, for military sexual trauma (MST) or a behavioral health disorder of any kind. In addition, without knowledge of the applicant's misconduct, it is unknown if the conduct would be mitigatable. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

c. Continuous Honorable Service: Grant. Although not specifically requested by the applicant, the Board noted that the applicant's service from first date of enlistment to the date before her last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 7 April 2008 to show: "Continuous Honorable Active Service From 19970612 UNTIL 20040317."

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 upgrading the characterization of her discharge.

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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. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. 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.
 - 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.
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. 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; TBI; 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.

6. 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, 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.

//NOTHING FOLLOWS//