

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230014873

APPLICANT REQUESTS: an upgrade of her under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Service Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 23 November 1983
- Medical Documents

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 at 23, she was verbally and sexually assaulted. She was gang raped by male Soldiers while stationed at the medical company in Furth, Germany. She was attacked and violated by these Soldiers and could not function to perform her daily duties when she was discharged from the United States Army. The applicant lists PTSD and sexual assault/harassment as related to her request. For over 40 years her journey has been silent, in pain, sadness, fear, shame, mental anxiety, depression, nightmares, and flashbacks that consume her.

3. The applicant provides:

a. A statement that reiterates the above and chronicles the above events and acts of sexual assault between 14 September 1983 and 10 October 1983. She endured multiple rapes and felt like a zombie. She was going through the motions; her brain was in survival mode. Her sergeant thought she was a useless Soldier, but she was not. She was traumatized by what she was going through daily, with the humiliation of her body

being taken from her. "No, please don't." Those words did not mean anything to them. She was recommended and approved for discharge (full statement is available for the Board's review). She provides a chronological list of events of the assaults, which is available for the Board's review.

b. Medical documents, which will be reviewed and discussed by the mental health staff at the Army Review Boards Agency (ARBA).

4. A review of the applicant's service records show:

a. DD Form 4 (Enlistment/Reenlistment Document) reflects she enlisted in the Regular Army on 19 July 1979.

b. Orders dated 10 February 1982, Headquarters, U.S. Army Engineer Center, Fort Belvoir, VA show the applicant reenlisted on 12 February 1982.

c. DA Form 2-1 (Personnel Qualification Record) item 5 (Oversea Service) reflects she served in Germany from on or about 5 April 1983 to on or about 22 November 1983.

d. A memorandum for record, 29 September 1983 reflects the applicant's squad leader made a formal statement that the applicant asked for joint domicile and was told she possibly could but that does not mean she would be leaving the unit. She said she would not be there that long. She did not want to be in the unit. She said she would give it her best.

e. The commander's request for evaluation of the applicant shows the applicant's behavior, undated. She complained of physical problems and visited the local medical treatment facility. She received a muscle relaxer and returned to her room and consumed approximately 28 pills. The commander stated problems exist between the applicant and her husband. She has also been separated from her boyfriend which troubles her. She is very resistant to field unit activities (passively). She has been discontent since arrival in the unit. She would not function in the unit. If she remained, she may cause additional harm to herself and possibly to unit members. She appeared psychologically unfit for duty.

f. DA Form 3822-R (Report of Mental Status Evaluation), dated 7 October 1983 shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible and met retention requirements. The diagnosis is passive aggressive personality disorder. There is no psychiatric disease or defect which warrants disposition through medical channels. She is able to distinguish right from wrong and adhere to the right.

g. The applicant's immediate commander notified her on 20 October 1983 of his recommendation that she be separated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, for unsatisfactory performance. The reason for the action was the applicant's inability to deal with the stress of a military environment. The applicant was advised of the rights available to her. The applicant acknowledged receipt on the same day.

h. The applicant consulted with legal counsel on 20 October 1983 and was advised of the basis for the contemplated action to accomplish her separation under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, the rights available to her, and the effect of action taken by her in waiving her rights. She understood that she may expect to encounter substantial prejudice in civilian life if a general discharge was being recommended. She elected to not submit statements in her own behalf.

i. On 20 October 1983, the applicant's immediate commander formally recommended her separation under the provisions of AR 635-200, Chapter 13. The unit commander noted the applicant's inability to cope with the pressures of military life. On 28 September 1983 she tried to commit suicide. He recommended she receive a General Discharge Certificate.

j. On 20 October 1983, shows the separation authority approved the recommended separation under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance and directed that the applicant be furnished a General Discharge Certificate.

k. The DA form 3822-R dated 28 October 1983, reflects the applicant had the mental capacity to understand and participate in the proceedings.

l. She was discharged under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance on 23 November 1983. She received a separation code "JHJ" and a reenlistment code 3 and 3C. Her service was characterized as under honorable conditions (General). She completed 4 years, 4 months, and 5 days of active service.

5. On 17 May 2024, ARBA requested military police reports for official use purposes (sexual assault) from the U.S. Army Criminal Investigation Division and a copy of the narrative summary, which pertains to the applicant. No response was received.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge to honorable. She contends she experienced

military sexual trauma (MST) and resultant PTSD that mitigates her 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 Regular Army on 19 July 1979; 2) The applicant's immediate commander notified her on 20 October 1983 of his recommendation that she be separated for unsatisfactory performance. The reason for the action was the applicant's inability to deal with the stress of a military environment; 3) The applicant was discharged on 23 November 1983, Chapter 13, for unsatisfactory performance. Her service was characterized as under honorable conditions (general). She completed 4 years, 4 months, and 5 days of net active service.

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

c. The applicant asserts she was exposed to MST and experienced PTSD while on active service, which mitigates her discharge. There was evidence the applicant was experiencing difficulty at her unit, and she requested to leave the unit. Her commander requested an evaluation for the applicant after she took an overdose of prescribed medication, and she was noted to be experiencing relationship and occupational problems. She was determined to not be functioning adequately in the unit, potentially a continued risk to herself, and psychologically unfit for duty. The applicant underwent a Mental Status Exam on 07 October 1983. She was diagnosed with "passive aggressive personality disorder," but she met retention requirements.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD related to MST, and she is actively engaged in behavioral health treatment till present. She also currently receives service-connected disability for PTSD. In addition, the applicant provided civilian medical documentation that she has been diagnosed with PTSD related to her experience of MST, and she is currently involved in therapy.

e. 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 behavior which resulted in her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her behavior which resulted in her discharge. There is sufficient evidence the applicant reported experiencing mental health symptoms while on active service. She

has also been diagnosed with service-connected PTSD as the result of MST by the VA and a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her behavior which resulted in her discharge. There is sufficient evidence the applicant reported experiencing mental health symptoms while on active service. She has also been diagnosed with service-connected PTSD as the result of MST by the VA and a civilian provider.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was exposed to MST and resultant PTSD while on active service. The applicant was reported to be experiencing stress which was impacting her military performance. This behavior and mental health symptoms were likely inappropriately labeled as "passive aggressive personality disorder", and this diagnosis led to her discharge. The applicant's reported stress and inability to perform her duties would be a natural sequelae to MST and resultant PTSD. Therefore, per Liberal Consideration, the applicant's behavior, which led to her discharge is mitigable. It is also recommended that her narrative reason for separation be amended.

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 conduct and the reason for separation. The applicant was discharged for unsatisfactory performance with the commander citing her inability to deal with the stress of a military environment. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that mitigated her behavior which resulted in her discharge, specifically, the applicant asserts she experienced military sexual trauma and the Board concluded the applicant reported experiencing mental health symptoms while on active service. Based on a preponderance of the evidence, the Board granted relief.

2. Prior to closing the discussion, the Board noted and concurred with the administrative note below.

BOARD VOTE:

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| █ | █ | █ | 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 23 November 1983 to show an honorable characterization of service.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 23 November 1983, is missing important entries that affect her eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks): "SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE."

REFERENCES:

1. Title 10, U.S. Code (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. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) 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. Chapter 13 provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

3. 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.

4. 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 Post-Traumatic Stress Disorder; traumatic brain injury (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.

5. 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.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JHJ (is to be used for RA Soldiers discharged for unsatisfactory performance.

7. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JHJ has a corresponding RE Code of "3 and 3C."

8. 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//