

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230014928

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- she was separated due to disability
- 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)
- Memorandum, Mental Status Evaluation, dated 17 May 2007
- letter, Department of Veterans Affairs (VA), dated 19 May 2022

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, she was hospitalized for mental health and was recommended for discharge due to mental health and post-traumatic stress disorder (PTSD). Her unit changed her discharge for a minor misconduct infraction, with a general discharge. She was bullied in the barracks by her peers and disobeyed orders because she had nobody else to talk to. She could not trust anyone or go to her chain of command because they were close to people she had problems with. Her discharge should be upgraded based upon the recommendation of the doctor at the time. She deals with mental health issues daily.

3. The applicant enlisted in the Regular Army on 3 October 2005, for a 5-year period. Upon completion of initial entry training, she was awarded military occupational specialty 31B (Military Police). The highest rank she attained was private first class/E-3.

4. The applicant was formally counseled on seven occasions between 4 April 2006 and 12 February 2007. On four of those occasions, she was ordered by her chain of

command to cease and desist an improper and unprofessional relationship with a married Soldier, Private Second Class W.M. (later promoted to PFC). Additional areas of emphasis covered in the counselings included:

- being late to formation
- failure to be at appointed place at prescribed time
- failure to obey an order
- disobeying a lawful order (by bringing a cellphone to the field)
- possible separation for patterns of misconduct

5. On 12 February 2007, the applicant's immediate commander issued the applicant a "No Contact Order." She was ordered to have no physical, verbal, written, texted, cellular, or third party communication with PFC W.M.

6. The applicant was formally counseled on 23 February 2007, for disobeying a lawful order to cease any form of non-duty related contact with PFC W.M., given to her by her platoon sergeant, squad leader, and team leader.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 26 March 2007, for failure to go at the time prescribed to her appointed place of duty, on or about 16 December 2006, and for two specifications of willfully disobeying a lawful command from her superior commissioned officer, on or about 11 February 2007 and 16 February 2007. Her punishment consisted of forfeiture of \$340.00 pay, extra duty and restriction for 14 days, an oral reprimand, and reduction to private/E-2.

8. The applicant underwent a pre-separation medical examination on 16 May 2007. The relevant DA Form 2807-1 (Report of Medical History) and corresponding DA Form 2808 (Report of Medical Examination) show she reported a medical history of mental health related issues. However, the examining provider determined she was medically qualified for service.

9. The applicant underwent a mental status evaluation on 17 May 2007. The examining psychiatrist noted diagnoses adjustment disorder with anxiety and depressed mood, and occupational problem. The psychiatrist made the following findings and recommendations:

a. The applicant met retentions standards. She had no psychiatric disease or defect that warranted disposition through medical channels; she was not appropriate for a medical board.

b. Her diagnosis represented a medical condition not amounting to disability and not appropriate for separation under Army Regulation (AR) 635-200 (Active Duty Enlisted

Administrative Separations), paragraph 5-11 (failure to meet procurement medical fitness standards) or 5-13 (personality disorder). Her condition manifested disturbances of emotional control sufficiently severe that her ability to effectively perform military duty was significantly impaired.

c. She was mentally responsible, able to distinguish right from wrong and adhere to the right, with the mental capacity to participate in proceedings. Additional efforts at rehabilitation were unlikely to develop her into a satisfactory member of the military.

d. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the command, to include separation for misconduct. The provider further recommended she be separated under the provision of AR 635-200, paragraph 5-17 (other designated physical or mental conditions).

10. The applicant was notified by her immediate commander of the commander's intent to initiate separation action against her under the provisions of AR 635-200, paragraph 14-12a, by reason of minor disciplinary infractions, with an under honorable conditions (general) discharge. The commander noted the applicant committed several acts of misconduct, to include maintaining an unprofessional relationship, failing to obey an order by bringing a cellphone to the field, and failing to be at her appointed place of duty. She was counseled on multiple occasions and received an Article 15. The applicant acknowledged receipt of the notification on 25 October 2007.

11. The applicant consulted with counsel on 30 October 2007. She was advised of the basis for the contemplated actions to separate her and its effects; of the rights available to her; and the effect of any action taken by her to waive her rights. She elected not to submit a statement in her own behalf.

12. The commander formally recommended the applicant's separation, prior to her expiration term of service, under the provisions of AR 635-200, paragraph 14-12a, by reason of minor disciplinary infractions. The intermediate commander concurred with the recommendation on 1 November 2007, further recommending the issuance of an under honorable conditions (general) characterization of service.

13. A legal review of the separation file was conducted on or about 19 November 2007. Trial Counsel noted the file met all of the procedural requirements of AR 635-200, and there was sufficient evidence to support the recommendation for separation.

14. The separation authority approved the recommended separation action on 7 December 2007 and directed a service characterization of under honorable conditions (general).

15. The applicant was discharged on 28 December 2007, under the provisions of

AR 635-200, paragraph 14-12a, by reason of misconduct (minor infractions). Her DD Form 214 confirms her characterization of service was under honorable conditions (general), with separation code JKN and reentry code 3. She was credited with 2 years, 2 months, and 26 days of net active service. She was awarded or authorized the following:

- National Defense Service Ribbon
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

16. The applicant provides a copy of her mental status evaluation, dated 17 May 2007, which is summarized above, and a letter from the VA, dated 19 May 2022, which shows she is receiving VA disability compensation for a combined service connected disability rating of 50 percent (%).

17. Regulatory guidance provides when a Soldier is discharged under the provisions of AR 635-200, Chapter 14 (misconduct), a discharge under other than honorable conditions is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

18. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under honorable conditions (general) to honorable and a change to her DD Form 214 to show she was discharged related to a disability. She contends she experienced a diagnosed mental health condition, including PTSD, that mitigates her misconduct.

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 3 October 2005.
- The applicant accepted NJP under the provisions of Article 15 of the UCMJ, on 26 March 2007, for failure to go at the time prescribed to her appointed place of duty and for two specifications of willfully disobeying a lawful command from her superior commissioned officer. The commander formally recommended the applicant's separation, prior to her expiration term of service, under the provisions of AR 635-200, paragraph 14-12a, by reason of minor disciplinary infractions.

- The applicant was discharged on 28 December 2007 and was credited with 2 years, 2 months, and 26 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she was hospitalized for a mental health condition, and it was recommended that she be discharged due to mental health and PTSD. She discussed experiences that occurred while in the barracks and that she could not trust anyone or go to her chain of command related to her problems. The application included a memorandum for the commander following a Mental Status Evaluation dated 17 May 2007. It showed a diagnosis of Adjustment Disorder with anxiety and depressed mood and occupational problems. The document indicated antidepressant medication and regular psychiatric care until separation with no access to weapons and no deployability. However, it was indicated that the applicant met retention standards and did not have a condition that warranted disposition through medical channels. It was recommended that she be administratively separated under AR 635-200, paragraph 5-17 due to having a diagnosis that represents a medical condition not amounting to disability but effects the soldier's ability to perform military duties. The application also included a letter dated 19 May 2022, which indicates that the applicant is receiving service-connected disability compensation from the VA at 50%. A Report of Medical History dated 16 May 2007 showed the applicant endorsed items related to having been evaluated or treated for a mental health condition and was taking an antidepressant medication. The document indicated she "is qualified" for service. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant is 50% service connected through the VA for Major Depressive Disorder effective 5 January 2022.

e. Documentation from the DoD dated 2 May 2007 indicated the applicant presented to the emergency room and reported feeling depressed for approximately two weeks as related to problems in her unit. She was diagnosed with Adjustment Disorder and referred to behavioral health. She was seen at the Life Skills Support Center on 9 May 2007 and expressed anxiety and depression symptoms associated with a pending deployment, and she was diagnosed with Adjustment Disorder with anxiety and depressed mood. She presented the following day for an initial psychiatric evaluation where she expressed feeling overwhelmed and stressed due to increased work requirements and characterized herself as a "conscientious objector," which she had expressed to her command who indicated to her that this status would be denied. She stated, "seeing her family; going home" and "getting out of the Army" as ways in which she would feel less depressed, and she stated she would "rather shoot myself than aim the weapon at someone else." She was unable to contract for safety during an

upcoming FTX and was admitted to inpatient psychiatry with a diagnosis of Adjustment Disorder. She was hospitalized for one week and discharged with an antidepressant medication. Documentation indicated the provider consulted with command about administrative separation, and they indicated support. She followed up for a post-hospitalization visit, and she was seen for a final behavioral health visit on 24 August 2007 where she expressed “being okay” with the discharge and hopeful about her future with plans to marry an active duty Air Force service member.

f. Documentation on 15 April 2009 showed a visit with a primary care behavioral health provider for depression symptoms associated with being nine weeks postpartum, a PCS, and her spouse returning from a short tour. She was again diagnosed with Adjustment Disorder. She presented for another visit for the same diagnosis in December 2009 due to situational stressors and requested restarting antidepressant medication.

g. The applicant initially engaged mental health treatment through the VA on 21 May 2020 reporting symptoms of anxiety and depression secondary to relationship problems and a recent move. She was diagnosed with Adjustment Disorder, and it was recommended that she decrease her alcohol consumption. She was restarted on the antidepressant medication that had been effective in the past. In July 2020 she made a call to the Veterans Crisis Line expressing suicidal thoughts after consuming at least four Vodka drinks. She was able to develop a safety plan and initiated psychotherapy through an evidence-based treatment for depression in conjunction with the medication. She was diagnosed with Depressive Disorder, unspecified and was referred for substance abuse treatment as well as vocational rehabilitation. She discontinued psychotherapy in October 2020 because she became employed. She reengaged with mental health in January 2022 and was again referred to substance abuse treatment. She did not keep an individual therapy appointment, but she engaged intermittently with group therapy and eventually the homeless/housing program. In December 2022, the applicant was diagnosed with Other Specified Personality Disorder (cluster B), Major Depressive Disorder, Unspecified Anxiety Disorder, and Alcohol Use Disorder as she was evaluated and began another evidence-based psychotherapy treatment. She attended weekly sessions until February 2023 when she had four consecutive missed appointments and was dropped from the treatment protocol. In May 2024 she requested mental health services again and ultimately opted for community care in July 2024, but she requested the consult to be discontinued on 1 August 2024.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition while on active service. However, the condition does not mitigate her misconduct or warrant a medical discharge.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had a mental health condition, including PTSD, at the time of the misconduct, and documentation showed she was diagnosed with an Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? Yes. Documentation supports that the applicant was diagnosed with a mental health condition, Adjustment Disorder with anxiety and depressed mood, while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records showed documentation supporting that the applicant was appropriately diagnosed with an Adjustment Disorder, and she expressed a desire to be removed from service due to being a conscientious objector. The behaviors associated with her misconduct, including disregard for authority, and the potential for discharge due to a pattern of misconduct precipitated her symptoms of anxiety and depression. However, there is insufficient evidence to support the presence of a mitigating mental health condition.

j. Documentation does not reflect recommendation by her psychiatric provider for a medical discharge, and she was deemed to meet retention standards at the time of her separation. In a review of VA and DoD documentation, there is no report of exposure to traumatic or stressful events while on active service and no diagnostic history of PTSD. There is insufficient evidence to support that the applicant had a medically disabling condition while on active service. However, the applicant contends she was experiencing a mental health condition that mitigated her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. Discharge Upgrade: Deny. The applicant was recommended for separation by her chain of command by reason of minor disciplinary infractions, after she committed several acts of misconduct, to include maintaining an unprofessional relationship, failing to obey an order by bringing a cellphone to the field, and failing to be at her appointed place of duty. She was counseled on multiple occasions and received an Article 15. She received a general discharge. The Board no error or injustice in his separation processing. 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 finding sufficient evidence to support that the applicant had a mental health condition while on active service; however, the condition does not mitigate her misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Disability Separation: Deny. The Board reviewed and agreed with the medical reviewing official's finding there is sufficient evidence to support that the applicant had a mental health condition while on active service; however, the condition does not warrant a medical discharge. There is no probative evidence that her condition warranted disability processing. Therefore, the Board determined a referral of her case to the Disability Evaluation System is not warranted.

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.

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 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent.
3. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.
4. Title 10, USC, Section 1556, 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.
5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).
 - a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.
 - b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component and Army National Guard members, these standards are applicable during the enlistee's first period of active duty for training.

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

7. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

8. 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; traumatic brain injury (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.

9. 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.

10. 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//