

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20230015114

APPLICANT REQUESTS:

- upgrade of her general under honorable conditions discharge to honorable
- change her narrative reason for discharge to medical

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, she began experiencing symptoms of Post Traumatic Stress Disorder (PTSD) upon returning to the States from her deployment to Korea. She became emotionally detached and engaged in minor misconduct by self-medicating with illegal drugs. She is actively making positive changes in her life, striving to improve her overall well-being and increase her chances for a better future. She has been diagnosed with PTSD and would like to have the ability to get the appropriate help and medications for her condition.
3. A review of the applicant's service record shows:
 - She enlisted in the Regular Army on 2 July 2019
 - On 13 April 2021, she tested positive for Tetrahydrocannabinol
 - On 7 June 2021, her commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12c(2), misconduct – abuse of illegal drugs, with a recommended character of service of honorable; she acknowledged on 7 June 2021

- She elected not to speak with a Trial Defense Attorney on 10 June 2021; however, she was advised of the basis for the contemplated action to separate her for misconduct UP of Chapter 14-12c(2), AR 635-200 and its effects; of the rights available to her; and the effects of any action by her waiving her rights
- Her Battalion Commander recommend approval and that her character of service as general under honorable conditions
- On 15 July 2021, the separation authority approved separation UP of AR 635-200, chapter 14 for misconduct-abuse of illegal drugs; he directed the applicant's service be characterized as general under honorable conditions discharge
- Accordingly, she was discharged on 20 August 2021 with a general under honorable conditions character of service, she completed 2 years, 1 month, and 19 days net active service this period

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge, and she is requesting a referral to DES as a result of PTSD to be assessed for a medical discharge. The applicant asserts PTSD is related to her requests. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 2 July 2019; 2) On 7 June 2021, her commander notified her of his intent to separate her under Chapter 14-12c(2), misconduct – abuse of illegal drugs; 3) The applicant was discharged on 20 August 2021, Chapter 14-12c(2)-abuse of illegal drugs with a general under honorable conditions character of service. She completed 2 years, 1 month, and 19 days net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided

c. The applicant is requesting an upgrade of her discharge, and she is requesting a referral to DES as a result of PTSD. The applicant asserts PTSD is related to her requests. There is insufficient evidence the applicant engaged in behavioral health services till after administrative Chapter separation proceedings were initiated. The applicant was seen for a Mental Status Exam as part of her administrative separation

proceedings on 28 April 2021. She was screened for PTSD, Depression, Traumatic Brain Injury, Substance Abuse, and Sexual Trauma. She was not diagnosed with a mental health condition, and she was found to meet medical retention standards IAW of Chapter 3 of AR 40-501, and she did not require a medical board for psychiatric purposes. The applicant was not seen further at behavioral health services during her active service. She was initially seen by SUDCC on 13 May 2021 due to a Command referral as a result of a positive urinalysis for illegal drugs. The applicant denied any mental health symptoms of anxiety, depression, or PTSD. She described smoking marijuana prior to and during her enlistment. She was diagnosed with Marijuana use. The applicant was not seen for a follow-up appointment at SUDCC after this appointment. There was insufficient evidence the applicant was placed on a permanent psychiatric profile, required inpatient psychiatric treatment, or was ever found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant was treated for behavioral health symptoms at the VA after her discharge. The applicant did undergo a Compensation and Pension Evaluation, but she has not been diagnosed with a service-connected mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was not diagnosed with a mental health condition including PTSD while on active service, and she has not been diagnosed with a service-connected mental health condition including PTSD by the VA. In addition, there is insufficient evidence she was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time. Also, there is insufficient evidence to support the applicant had a condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced PTSD on active service, which mitigates her misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced PTSD on active service, which mitigates her misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while on active service. She did engage in substance use, which can be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant was not diagnosed with a mental health condition including PTSD while on active service, she not placed on a psychiatric profile while on active service, did not require inpatient psychiatric treatment while on active service, and she was not found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence her case warrants a referral to DES for PTSD at this time. Yet, the applicant contends she was experiencing a mental health condition or an experience that mitigates her misconduct and warrants a medical discharge, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 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 misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing a positive urinalysis for marijuana. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support her request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service and the narrative reason the applicant received upon separation was appropriate.

2. The Board considered the following Kurta Questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced PTSD on active service, which mitigates her misconduct.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced PTSD on active service, which mitigates her misconduct.

c. Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while on active service. She did engage in substance use, which can be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant was not diagnosed with a mental health condition including PTSD while on active service, she not placed on a psychiatric profile while on active service, did not require inpatient psychiatric treatment while on active service, and she was not found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence her case warrants a referral to DES for PTSD at this time. Yet, the applicant contends she was experiencing a mental health condition or an experience that mitigates her misconduct and warrants a medical discharge, and per Liberal Consideration her contention is sufficient for the board's consideration.

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.

4/15/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. A 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

a. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta

Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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//