

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230015167

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions discharge to honorable
- in effect, a change in the narrative reason for separation

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)
- Self-Authored Statement (5 pages)
- Department of Veterans Affairs (VA) Medical Correspondence (3 pages)

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 is requesting an upgrade of her general, under honorable conditions discharge to honorable. She also marked "narrative reason for separation" in Block 10 (Action Requested) of the DD Form 293 and provided a self-authored statement and notes in part:

a. Upon arriving at Fort Campbell, KY she felt she part of a team and was protected by her supervisor, Sergeant (SGT) T. A change in the platoon sergeant to SGT L, resulted in a more relaxed environment and SGT J began to make inappropriate comments. His comments referenced her body and her attire to include, whether or not she was wearing undergarments and the color. She addressed her concerns with SGT L and was told "we are all green here," which led her to believe he did not take her concerns seriously because he did not see male or female. The comments escalated from SGT J, examples provided in the applicant's statement, available for review by the Board.

b. SGT L retired and SGT B took over, it appeared there would be some changes since SGT B gave the impression that he cared. She informed SGT B of SGT J's inappropriate comments and that it made her feel uncomfortable. SGT B shared with her that he believed she was "taking it the wrong way." She was discouraged after raising her concerns to the attention of two leaders and nothing was being done. A platoon morale booster day called "white t-shirt day" encouraged Soldiers to wear white t-shirts and shorts/jeans. The day also included getting wet with water guns and water balloons. She did not want to participate because of the ongoing harassment and attended the event in uniform. She was subsequently told she pulled the morale down because she was not participating in white t-shirt day. The comments from SGT J only escalated and because she would not accept his advances, he began falsely documenting misconduct. Additional morale boosters consisted of pool parties and barbecues where the expectation was to wear a bathing suit or skimpy clothing.

c. She went to see the chaplain when all other options failed. He provided her with an Equal Opportunity pamphlet, and it led her to file a formal complaint. She was told they would be in touch following their interaction with the leadership to discuss options. In February/March of 2005 SGT J assaulted her. She was informed by SGT C to stop by SGT J's office because he needed something from her. He directed her to find an item in a bottom drawer and then began stroking her hair. She stepped back feeling something terrible was going to happen and when she tried to leave, she realized the door had been locked. He covered her mouth, assaulted her, and told her not to say anything because he could make her life hard. She cried and felt humiliated as she put her clothes back on. She walked out of the office to see two SGT's standing by the door and immediately walked to her car.

d. The applicant believed two other sergeants from the unit intentionally locked her in the office. She cried in her car and contemplated what her options to include going to the police station or even suicide. She did not want to live that way and could not get herself clean enough after the assault. She did not go to work the following day nor did anyone call to check on her whereabouts despite her not calling to tell anyone where she was. She did not want to be around him, she had reached her lowest point, and felt completely alone. She became paranoid and believed he would hurt her again. She was directed to work late, but her fear of being hurt again prevented her from staying and she was written up. She had trouble sleeping, concentrating, and was experiencing nightmares. She returned to the Chaplain, but never received any follow-up from him.

e. Eventually she went through the chain of command about the harassment from SGT J.; but he continued to make comments and she felt the harassment was nonstop. During this time, she was emotionally drained and constantly accused of insubordination. She consulted with legal about talking to the commander and legal suggested to the command that she be transferred to another unit. She filed another EO complaint and again was never told the outcome of the EO complaints. She was 18

years old at the time, scared and defenseless and felt there were no accessible resources. She did not know who to go to for help and felt it was essentially a good old boy system and they were protecting each post-traumatic stress disorder (PTSD), depression, and anxiety by the VA.

f. She was disgracefully discharged as a result of the torture, retribution, and persecution she endured while serving in the military. Her early discharge was the result of verbal and physical assaults committed against her when she was still a young Soldier. She was alone, ostracized, and targeted by the leadership, yet she was expected to respect and follow those in command or face reprimand or worse. She now seeks the Board's consideration to change and overturn her general discharge to an honorable characterization of service.

3. The applicant provides a statement from the VA dated 17 June 2024 which listed, among other ratings, a 70% service-connected rating for PTSD. It also identified the applicant as having a 100% combined rating.

4. A review of the applicant's service record shows:

a. On 13 January 2004, she enlisted in the Regular Army.

b. A DA Form 3822-R (Report of Mental Status Evaluation), dated 17 August 2005, confirmed the applicant was referred for a mental evaluation for the purpose of separation. The physician noted in the remarks, she was psychiatrically cleared for any administrative action deemed appropriate by the command.

c. On September 2005, the applicant underwent a medical examination for the purpose of separation which indicated the applicant was 35 weeks pregnant, depressed, and suffered from chronic feet/knee pain. The physician noted in Block 78 (Recommendations) he concurred with separation.

- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

d. On 15 June 2005, she accepted nonjudicial punishment for being disrespectful in language toward a superior noncommissioned officer by saying to him, "I have better things to do", or words to that effect. Her punishment included reduction to private (PV2)/E-2.

e. On 12 October 2005, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b, for a pattern of misconduct. The reason for his proposed action were she repeatedly showed a lack of

discipline, had not performed to standard, had been disrespectful towards her superior noncommissioned officers, found guilty of lying to noncommissioned officers, and numerous other accounts of insubordinate conduct in her packet. The applicant acknowledged receipt of the notification of separation action on the same day.

f. On 12 October 2005, the immediate commander-initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct. He recommended that her period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

g. On 20 October 2005, after consulting counsel, the applicant and counsel submitted a statement on her behalf. The statement indicated the applicant did not qualify for separation under chapter 14-12b because the unit failed to comply with the rehabilitative requirements and requested she be transferred to a different battalion. Counsel further noted the applicant was being discharged for actions centered around her pregnancy, her hair style, and her possessing her counseling packet. The unit provided no evidence the mandatory rehabilitative transfer occurred, and a waiver of the transfer did not apply to this case. The counselings further show adequate rehabilitative measures were not taken prior to initiating separation and counselings were issued in retaliation for several EO complaints that were filed. The entire chapter appeared to be an illegal reprisal for legitimate complaints made to EO. The applicant worked the past 3 months without incident and since two noncommissioned officers deployed with the advance party, all negative counselings had stopped. Counsel further recommended the separation be disapproved and a rehabilitative transfer granted with a commander's inquiry to find out the status of the EO complaints filed.

h. On 2 November 2005, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for patterns of misconduct. She would be issued a general, under honorable conditions characterization of service.

i. On 18 December 2005, she was discharged from active duty with a general, under honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 1 year, 11 months, and 6 days of active service with no lost time. She was assigned separation code JKA and the narrative reason for separation listed as "Pattern of Misconduct," with reentry code 3. It also shows she was awarded or authorized:

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

5. On 10 June 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding Military Sexual Trauma (MST) and no records were found.

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

7. By regulation (AR 635-5), 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

8. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

9. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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

#### 11. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 his under honorable conditions (general) discharge. On her DD 149, she noted PTSD and Sexual assault/harassment are related to her request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of Service under consideration shows she entered the Regular Army on 13 January 2004 and was discharged under honorable conditions (general) on 18 December 2005 under the separation authority provided by paragraph 14-12b of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000): Pattern of Misconduct. It does not contain a period of Service in a hazardous duty pay area.

d. The applicant underwent a Mental Status Evaluation on 17 August 2005. The provider documented a normal examination and opined the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the medial retention requirements in chapter 3 of AR 40-501, Standards of Medical Fitness. He psychiatrically cleared her for any administrative action deemed appropriate by command.

e. On 12 October 2005, her company commander informed her of the initiation of action to separate her under paragraph 14-12b or AR 635-200:

The reasons for my proposed action are as follows: That you have repeatedly shown a lack of discipline and have not performed to standard. You have been disrespectful towards your superior noncommissioned officers, you have been found guilty of lying to noncommissioned officers, and there are numerous other accounts of insubordinate conduct in your packet. Your chain of command sees this as a problem, and you have demonstrated through repeated conduct, after formal counseling, that you simply do not wish to abide by the everyday common courtesies and act as a professional soldier. There is no room for soldiers like you in this unit, or the United States Army."

f. The battalion commander approved her separation on 2 November 2005.

g. JLV shows she has been awarded several VA service-connected disability ratings, including one for PTSD related to her MST. From a PTSD clinic encounter:

"Veteran presents to appointment with mixed anxious/sad mood. We spoke a bit about symptoms she's experiencing that are related to her trauma as well as the hurt and betrayal she feels related to the perpetrator and others in her unit."

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD due to MST

(2) Did the condition exist or experience occur during military service? YES

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. As there is an association between PTSD and military sexual assault with resistance to authority, there is a nexus between the applicant's repeated disrespect toward noncommissioned officers and insubordinate conduct. However, the condition does not interfere with one's ability to differentiate right from wrong and so cannot mitigate her lying to noncommissioned officers.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding partial mitigation noting there is a nexus between the applicant's repeated disrespect toward noncommissioned officers and insubordinate conduct.

2. The Board noted the condition does not interfere with one's ability to differentiate right from wrong and cannot mitigate her lying to noncommissioned officers. Under liberal consideration, the Board recognized there is an association between PTSD and military sexual assault with resistance to authority. However, the Board notwithstanding the advising opine, found insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board determined the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The applicant was discharged for misconduct and provided a under honorable (general) conditions discharge. The Board agreed that the applicant's discharge characterization is warranted as she did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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, 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. Army Regulation 635-5 (Separation Processing and 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. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).
3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code JKA is listed with the narrative reason as, "Pattern of Misconduct" in accordance with AR 635-200, Chapter 14-12b.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - 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.
  - 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
5. 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 post-traumatic stress disorder (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.

6. 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 DRBs and BCM/NRs 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, 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, 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.

7. 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.

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//