

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240000234

APPLICANT REQUESTS:

- Reconsideration of her previous request for upgrade of her under other than honorable conditions (UOTHC) discharge
- Additionally, she requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Veterans' services Client information record
- Post-service Medical Notes
- Veterans Affairs (VA) Form 21-0781a (Statement in Support of Claim for Service Connection for post-traumatic stress disorder (PTSD) Secondary to Personal Assault)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150014821 on 14 February 2017.

2. The applicant states there was a definite injustice for equality in her case. She begged for help after being attacked and raped. She has proof of asking for this help in her military records. She wouldn't have gone absent without leave (AWOL) if she hadn't been attacked. She is at the mercy of the Army, and she has to live through all of this pain. She is asking the Board for compassion and a relook of her military records before making a decision. Read everything; one of the papers she wrote that, "she wanted to be a mom again." That was not the reason why she wanted to get out; but she was forced to write that statement. She lives every day in pain. She doesn't trust because of how the Army has treated her. She doesn't allow people to come into her life because she is scared to death. Her discharge was an injustice.

3. On 16 July 1987, the applicant enlisted in the Regular Army, for 3 years. Her record shows she was not awarded a military occupational specialty.

4. On 5 January 1988, the applicant was reported as AWOL and remained absent until she was detained by civil authorities on 9 August 1988.

5. On 11 August 1988, the applicant voluntarily declined a separation medical examination.

6. On a Personnel Control Facility interview sheet, dated 15 August 1988, the applicant states she went AWOL because she wanted to be a mother again. Additionally, she had talked to her commander, first sergeant and legal advisor in an attempt to resolve the problem prior to going AWOL. Nobody wanted to help.

7. Court-martial charges were preferred against the applicant on 17 August 1988, for violations of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with one specification of going AWOL, from 5 January 1988 through 9 August 1988.

8. On 17 August 1988, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to her.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She further acknowledged she understood that if her discharge request was approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the VA, and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

b. She declined to submit a statement in her own behalf.

9. On 23 August 1988, the applicant's commander recommended approval of her request for discharge. The commander noted the applicant had no motivation for continued service, and would not respond to either counseling or rehabilitation.

10. On 27 September 1988, the separation authority approved the applicant's request for discharge for the good of the service and directed issuance of a DD Form 794A (UOTHC Discharge Certificate).

11. The applicant was discharged on 24 October 1988. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. She was discharged in the lowest enlisted grade and her service was characterized as UOTHC. She was assigned Separation Code KFS and Reenlistment Code RE-3. She completed 8 months and 5 days of net active service this period with 217 days of lost time.

12. The applicant petitioned the ABCMR requesting upgrade of her UOTHC. On 14 February 2017, the Board voted to deny relief and determined the overall merit of the case was insufficient as a basis for correction of the applicant's records.

13. In the processing of the applicant's previous case, a search of the U.S. Army Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

14. The applicant provides VA administrative documents and post-service medical notes, which show she has been diagnosed and received treatment for various illnesses to include depression, bipolar disorder, and insomnia. These documents are provided in their entirety for the Board's review within the supporting documents.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, the applicant consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

17. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request for upgrade of her under other than honorable conditions (UOTHC) discharge.

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 16 July 1987.
- On 5 January 1988, the applicant was reported as AWOL and remained absent until she was detained by civil authorities on 9 August 1988.

- Court-martial charges were preferred against the applicant on 17 August 1988, for violations of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with one specification of going AWOL, from 5 January 1988 through 9 August 1988.
- On 17 August 1988, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to her. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service.
- On 23 August 1988, the applicant's commander recommended approval of her request for discharge. The commander noted the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation.
- The applicant was discharged on 24 October 1988. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. She was discharged in the lowest enlisted grade and her service was characterized as UOTHC. She was assigned Separation Code KFS and Reenlistment Code RE-3. She completed 8 months and 5 days of net active service this period with 217 days of lost time.
- The applicant petitioned the ABCMR requesting upgrade of her UOTHC. On 14 February 2017, the Board voted to deny relief and determined the overall merit of the case was insufficient as a basis for correction of the applicant's records.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "there was a definite injustice for equality in her case. She begged for help after being attacked and raped. She has proof of asking for this help in her military records. She wouldn't have gone absent without leave (AWOL) if she hadn't been attacked. She is at the mercy of the Army, and she has to live through all of this pain. She is asking the Board for compassion and a relook of her military records before making a decision. Read everything; one of the papers she wrote that, "she wanted to be a mom again." That was not the reason why she wanted to get out; but she was forced to write that statement. She lives every day in pain. She doesn't trust because of how the Army has treated her. She doesn't allow people to come into her life because she is scared to death. Her discharge was an injustice."

d. Due to the period of service no active-duty electronic medical records were available for review. However, on a Personnel Control Facility interview sheet, dated 15 August 1988, the applicant stated she went AWOL because she "wanted to be a mother

again". Additionally, she had talked to her commander, first sergeant and legal advisor in an attempt to resolve the problem prior to going AWOL. Nobody wanted to help.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of her discharge. The applicant received a brief episode of care via the VA from 8 February to 27 February 2019, when she relocated with her boyfriend and sought to establish care. The applicant was seen on a humanitarian basis but was referred elsewhere due to issues with eligibility. Inconsistent with the applicant's statement to the Board, she reported during an intake session, in-service verbal harassment and hazing that triggered her due to a preexisting history of sexual trauma. The applicant reported an extensive pre-military history of trauma and mental health issues. During her intake session, she self-reported having been diagnosed with Intermittent Explosive Disorder, Major Depressive Disorder, PTSD, and Bipolar Disorder. The applicant further reported an extensive post-military history of legal involvement/incarceration, substance use, and sex work. The applicant was diagnosed with Bipolar II Disorder and was recommended she received ongoing therapy and medication management. In addition, the applicant provides post-service medical documentation indicating she has been diagnosed and received treatment for various BH conditions including Major Depression, Bipolar Disorder, Insomnia and Cocaine Abuse.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an experience of MST and subsequent BH condition that mitigates her misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST while at advanced individual training.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserts the mitigating experience of MST. As there is an association between MST and avoidant behavior, there is a nexus between the applicant's experience of MST and her misconduct of one specification of going AWOL.

g. Per Liberal Consideration, the applicant's assertion of MST is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in her available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical provider's finding sufficient evidence to support the applicant had an experience of MST and subsequent BH condition that mitigates her misconduct. Therefore, the Board determined although her service did not rise to the level required for an honorable characterization (given her lengthy AWOL), a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the DD Form 214 for the period of service ending 24 October 1988

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 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. 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.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 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. 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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 mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

//NOTHING FOLLOWS//