

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240000330

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

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

- DD Form 149 (Application for Correction of Military Record), 26 October 2023
- Department of Veterans Administration (VA) Rating Decision, 1 September 2023

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 was sexually assaulted and harassed. She was given marijuana by a higher ranking member and discharged in error. She reported the sexual harassment and has provided proof. She is a victim of military sexual trauma and has post-traumatic stress disorder (PTSD). The proof of PTSD is in her records.
3. The applicant provides a copy of her VA Rating Decision, dated 1 September 2023, showing she has been granted 100% disability benefits for PTSD effective 27 February 2023.
4. A review of the applicant's service records show:
 - a. On 16 January 1984, she enlisted in the Regular Army. On 9 May 1984, she was assigned to Company A, 34th Support Battalion, Fort Hood.
 - b. On 15 May 1984, a urine specimen collected from her on 26 March 2003 tested positive for Tetrahydrocannabinol (THC), as indicated on a chain of custody document. The test basis was command directed unit testing.

c. On 22 August 1984, a bar to reenlistment was imposed against her by reason of positive urinalysis test on 15 May 1984.

d. On 25 January 1985, her company commander, approved removal of her bar to reenlistment based on a negative follow-up urinalysis test result and with successful completion of alcohol and drug counseling program.

e. On 1 June 1985, she was promoted to specialist/E-4.

f. A drug toxicology urinalysis test result (DD Form 2624 (Specimen Custody Document – Drug Testing)), dated 17 December 1985, reflects a urine specimen collected from her on 13 November 1985 tested positive for Tetrahydrocannabinol (THC). The test basis is not shown.

g. On 16 January 1986, she underwent a mental status evaluation as requested by her command. A DA Form 3822-R reflects the Chief Psychiatrist, Darnall Army Medical Center, found that she met the physical retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness). The examiner further determined that she was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in proceedings. The examiner cleared her for administrative action deemed appropriate by her command.

h. On the same date she underwent a medical examination and gave a report of medical history. An SF 88 shows the examining physician found she had no neurological or psychiatric abnormalities and found she was qualified for chapter proceedings. An SF 93 (Report of Medical History) reflects she reported frequent trouble sleeping and depression or excessive worry. She indicated she was not in good health and was taking medication.

i. On 21 January 1986, she accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for wrongful use of some amount of marijuana at Fort Hood between the period 13 October 1985 and 13 November 1985. Her punishment consisted of reduction to private first class (PFC)/E-3 and 14 days of extra duty.

j. On 7 March 1986, she underwent a medical examination and on 9 March 1986, she gave a report of medical history. She indicated she was in good health and was not taking medication. The examining physician indicated she was qualified for separation.

k. On 10 March 1986, the immediate commander notified her of his intent to initiate separation action against her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for commission of a

serious offense, and advised her of her rights. Her commander recommended she receive an under honorable conditions (General) characterization of service. The specific reason for his proposed action was: positive urinalysis test for marijuana. She understood she had the right to consult with consulting counsel and she may consult with civilian counsel at her own expense; she may submit statements in her own behalf; she could obtain copies of the documents that would be sent to the separation authority supporting the proposed separation; or she may waive these rights in writing.

l. On the same date, she acknowledged receipt of her commander's separation notification. She consulted with counsel and was advised of the basis of the contemplated separation against her, its effect, and her rights. She understood her case would not be considered before a board of officers since she had less than 6 years total active and/or reserve military service. She elected not to submit statements in her own behalf and she requested copies of the documents that would be sent to the separation authority supporting the proposed separation. She understood that the least favorable characterization she may receive was an under honorable conditions (General) characterization of service. She further understood that she may expect to encounter substantial prejudice in civilian life if a discharge under honorable conditions (General) was issued to her.

m. On 10 March 1986, her company commander initiated separation action against her under provisions Army Regulation 635-200, paragraph 14 for misconduct-commission of a serious offense. He recommended approval of her separation for abuse of illegal drugs and a positive urinalysis result. Also on 10 March 1986, her intermediate commander recommended approval of her separation.

n. On 26 March 1986, the separation authority approved and ordered her separation under provisions of Army Regulation 635-200, Chapter 14 and directed issuance of a General Discharge Certificate.

o. On 2 April 1986, she was discharged. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c by reason of misconduct-drug abuse with an under honorable conditions (General) characterization of service; a separation code of JKK; and a reenlistment code of RE-3. She completed 2 years, 2 months, and 17 days of active service. She was awarded or authorized: Army Service Ribbon and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

5. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitations.

6. 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.

7. 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. She contends she experienced an undiagnosed 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 16 January 1984.
- The applicant tested positive for THC in May 1984 and again in November 1985, and she accepted NJP for wrongful use of some amount of marijuana. In March 1986 she was notified of intent to initiate separation action against her by her commander under provisions Army Regulation 635-200, paragraph 14 for misconduct-commission of a serious offense: abuse of illegal drugs and a positive urinalysis result.
- The applicant was discharged on 2 April 1986 and completed 2 years, 2 months, and 17 days of 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 sexually assaulted and has PTSD. She provided a VA Rating Decision letter dated 1 September 2023, which showed an increase in a disability rating for PTSD from 70% to 100%. A Report of Mental Status Evaluation dated 16 January 1986 indicated the applicant had the capacity to understand and participate in the administrative proceedings, and a Report of Medical Examination with the same date showed she endorsed sleep difficulty and depression or excessive worry. A second Report of Medical Examination dated 7 March 1986 indicated no mental health symptoms or diagnoses. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant initiated mental health treatment at the VA on 1 October 2020, and she reported symptoms of anxiety, depression, and PTSD. She related she had been seeing a non-VA therapist weekly since December 2019, but she was dissatisfied with the treatment she was receiving. She was started on a medication to help with sleep and mood, but documentation from five days later indicated the applicant was unhappy with the care she had received, and she requested all documentation of the medication and the visit

to be removed from her record. Her next encounter with mental health was on 17 June 2021, and she reported a history of sexual assault by a commanding officer during basic training and there was discussion of the resultant effects of this event on her military career and her life. She also discussed recent stressors including home foreclosure and going on disability from her job after 35 years of employment. She was assisted with the disability claims process by the MST coordinator, and she attended five therapy sessions, which focused on stress management and coping. Her diagnosis was PTSD and Anxiety Disorder. She was referred to a higher level of care within Mental Health, but she did not complete that appointment. Her next encounter was on 29 September 2022, and she discussed concerns related to her grandchildren. She was again provided with assistance for her disability claim and referred to the Mental Health Clinic. She was contacted on 31 January 2023 regarding scheduling attempts, and she reported she was struggling with life stressors related to her family, which interfered with her ability to engage in treatment but expressed intent to engage in treatment. After several more scheduling attempts, she had an intake for psychotherapy on 8 August 2023. Her primary concern was related to custody of her grandchildren, and the therapist advised she speak with her attorney about mental health treatment. The applicant's next encounter was on 31 July 2024, and documentation indicated she expressed a need for support with family problems. The provider noted a need for trauma-focused treatment with plans to make a referral at her next session. Her diagnosis is PTSD, and her next appointment is scheduled for 27 August 2024.

e. 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 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 discharge? Yes. The applicant asserts she had an undiagnosed mental health condition, PTSD, at the time of the misconduct. There is documentation from her time in service that she reported symptoms of sleep difficulty and depressed mood or excessive worry, and she is 100% service connected for PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service. She asserts she experienced MST resulting in PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant has had a fully mitigating BH experience, MST, which she reported occurred during basic training, and she has been diagnosed with PTSD by the VA. The applicant's history of substance use is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure and can be a natural

sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant committed a serious offense (illegal drugs). As a result, her chain of command initiated separation action against her for misconduct. She was separated with a general, under honorable conditions discharge. The Board found no error or injustice in her 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 determination finding sufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct. Based on this finding, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for her separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant DD Form 214 for the period ending 2 April 1986, as follows:

- Character of Service: Honorable
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

■

■ ■

■

■

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, convictions by civil authorities, and abuse of illegal drugs. 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.

d. Paragraph 14-12c. Under this paragraph members were subject to separation for commission of a serious offense. Commission of a serious military or civil offense, in the specific circumstances of the offense warranted separation and a punitive discharge, would be authorized for the same or a closely related offense under the MCM. Abuse of illegal drugs. First time drug offenders, grades E-5-E-9 would be processed for separation upon discovery of a drug offense. Second time drug offenders, grades E-1 to E-9 would be process for separation after the second offense.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKK" corresponded to "Misconduct-Drug Abuse," and the authority, Army Regulation 635-200, chapter 14-12c.

4. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

6. 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. 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. 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.

7. 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//