

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240000433

APPLICANT REQUESTS:

- upgrade of her under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable
- favorable change to her narrative reason for separation.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter

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 a mother with two children; her recruiter informed her to get married to join the Army. She completed basic training and went back to Maryland, to check on her children. Everything seemed fine; however, upon returning to advanced individual training, family members called to say that her husband had placed the children with other people. She informed her drill sergeant; but did not receive any support from her unit. She went absent without leave (AWOL) so she could take care of her kids. She intended to return to her unit once her family situation was stabilized. After researching Army regulations, she now realizes that she should have gotten help.

3. On her DD Form 293, the applicant notes other mental health and intimate partner violence issues are related to her request.

4. The applicant enlisted in the Regular Army on 28 March 2006, for 4 years. The highest grade she attained was E-2.

5. On 4 July 2006, the applicant was reported as AWOL and remained absent until she returned to military authorities on 19 July 2006.
6. On 22 September 2006, the applicant was reported as AWOL a second time, and remained absent until she returned to military authorities on 26 September 2006.
7. On 1 October 2006, the applicant was reported as AWOL a third time, and remained absent until her apprehension by civil authorities on 5 June 2007.
8. Court-martial charges were preferred against the applicant on 11 June 2007, for violation 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 on or about 1 October 2006 to on or about 5 June 2007.
9. On 11 June 2007, 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 – Active Duty Enlisted Administrative Separations), Chapter 10, request for discharge in lieu of trial by court-martial. In her request for discharge, she acknowledged her understanding of the elements of the offenses charged, and she was admitting guilt to one or more of the specifications against her, or of a lesser included offense which also authorized the imposition of a bad conduct discharge. She further acknowledged she understood that if her discharge request was approved, she could be deprived of several Army benefits, she could be ineligible for some benefits administered by the Veterans Administration, 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.
10. On 26 July 2007, the applicant's commander recommended approval of her request for discharge. The commander noted that punishment would have a minimal rehabilitative effect on the applicant; a discharge would be in the best interest of all concerned.
11. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 9 August 2007, and directed her discharge under UOTHC.

12. The applicant was discharged on 22 August 2007. She was credited with 8 months and 2 days of net active service this period with 266 days of lost time. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, Chapter 10
- item 26 (Separation Code) – KFS
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

13. 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.

14. 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.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service. She contends she experienced mental health conditions and intimate partner abuse that mitigates her misconduct. 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 28 March 2006; 2) The applicant was reported AWOL three times between 04 July 2006-05 June 2005; 3) Court-martial charges were preferred against the applicant on 11 June 2007 for one specification of going AWOL; 4) The applicant was discharged on 22 August 2007, Chapter 10, by reason of "In Lieu of Trial By Court-Martial." Her service was characterized as UOTHC.

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

c. The applicant asserts she was experiencing mental health conditions and intimate partner abuse while on active service, which mitigates her misconduct. There is evidence the applicant was seen at military behavioral health services on 11 September 2006 following a discharge from a civilian hospital. The applicant was reported to have been hospitalized three times over the past few months for "passive suicidal ideation

and moderate to severe depression.” She reported being very concerned over the status of her two children, who were with their biological father, but she was unable to contact him during her initial training. This situation was extremely distressing to the applicant, and she was very worried for their welfare. She was recommended for continued treatment and diagnosed with an adjustment disorder. She was seen for one follow-up session a week later on 18 September 2006, but the applicant was still reporting significant depression and anxiety relating to the condition of her children despite finally being able to speak to them on the phone.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and she does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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 mental health conditions and intimate partner violence which mitigates her misconduct. The applicant was hospitalized multiple times for suicidal ideation and depressive/anxiety symptoms related to the status of her children and diagnosed with an adjustment disorder. There is evidence her partner was not keeping her informed of their location or condition while she was attending initial training.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions and intimate partner violence which mitigates her misconduct. The applicant was hospitalized multiple times for suicidal ideation and depressive symptoms related to the status of her children and diagnosed with an adjustment disorder. There is evidence her partner was not keeping her informed of their location or condition while she was attending initial training.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition, while she was on active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to a mental health condition or the stress of the intimate partner abuse of withholding information about the location and status of her children. The applicant did report while on active service being extremely concerned for her children, which would also potentially result in the applicant going AWOL. Thus, there is sufficient evidence the applicant was experiencing a

mitigating mental health condition and experience of intimate partner abuse during her active service.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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.

a. Discharge upgrade: Grant to general. The evidence of record shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, she 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 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 while her service clearly did not rise to the level required for an honorable discharge (given her AWOL and apprehension by civil authorities), a general, under honorable conditions 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 his separation and thus the narrative reason for separation and corresponding codes should not change.

b. Narrative Reason for Separation: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after she committed a UCMJ violation and when court-martial charges were preferred against her, she chose the voluntary discharge in lieu of trial by a court-martial in accordance with chapter 10 of AR 635-200. The underlying reason for her discharge was her request for voluntary discharge in lieu of trial by court-martial under chapter 10. The only valid narrative reason for separation permitted under chapter 10 of AR 635-200 is "in Lieu of Trial by Court-Martial." The Board found no error or injustice in the reason for her separation and the applicant did not provide a convincing reason to change it.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 22 August 2007 as follows: Character of Service: General Under Honorable Conditions.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to the applicant's narrative reason for separation.

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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. 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, in lieu of trial by court-martial.

4. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) 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.

5. 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 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. 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.

7. 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//