

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20240000502

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her service was characterized as honorable.

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

- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States), with self-authored statement
- DD Form 214, for the period ending 28 June 2005
- National Personnel Records Center (NPRC) Letter, dated 18 August 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect:

a. A colleague of hers suggested they enlist as battle buddies. She thought her great grandparents would be proud to see her serving her country. Initially, her recruiter made her feel well taken care of. However, she was misled and misdirected the entire time. He encouraged her to sign a document stating she never had surgery, despite having had a cornea transplant in 2004. He sexually harassed her and on one occasion tried to force himself upon her. He threatened to rape and kill her if she told anyone. She was in fear and began having dreams about the incident.

b. During medical in-processing at reception, she underwent an eye exam. The doctor noticed scar tissue in her eye. She told him about her cornea transplant. She was afraid of getting in trouble, but she was told she would receive a medical discharge. She was required to stay at Fort Jackson, SC, as a "stay over" for a month. During that time, she was miserably unhappy, fearful, paranoid, and had thoughts of going absent without leave. She had severe anxiety, recurring nightmares, and difficulty sleeping and eating. Some of the female holdovers "fraternized" with each other. She was threatened

in many ways because she would not join in there unruly behavior. A fellow Soldier attempted to sexually assault her, and she was afraid of her dignity being taken away. She cried every day and felt her body was severely damaged, both mentally and physically.

c. It has been a rocky road for her since. She still has nightmares, sleepless nights, and difficulty maintaining friendships. Sometimes her performance at work is affected. Following an incident where she got into trouble, she was required to undergo counseling. She discovered she had an anger problem and was encouraged to see a doctor to determine if she had post-traumatic stress disorder (PTSD). She did not because she was afraid it might hinder future employment. She feels she has paranoia, uncontrollable anger, an impaired mental state, and PTSD. Sometimes she is afraid of herself. She needs help tremendously.

3. Prior to enlisting, the applicant underwent a medical examination. The relevant DD Form 2808 (Report of Medical Examination), dated 25 January 2005, shows the applicant was found medically qualified for service.

4. The applicant enlisted in the U.S. Army Reserve on 25 January 2005. She entered active duty on 7 June 2005 for the purpose of completing initial entry training at Fort Jackson, SC.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing. However, Orders 171-1308, issued by Headquarters, U.S. Army Training Center, Fort Jackson, SC on 20 June 2005 and her DD Form 214 show she was discharged on 28 June 2005, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), by reason of failure to meet procurement medical fitness standards. Her service was uncharacterized. She was credited with 22 days of active service this period. She was not awarded a military occupational specialty.

6. The applicant provides a letter and attached service request from the NPRC, dated 18 August 2023, showing that her application was forwarded to the Army Review Boards Agency (ARBA) for review.

7. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

8. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to her uncharacterized service to honorable. She contends she experienced an undiagnosed mental health condition and MST that mitigates her 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 U.S. Army Reserves on 25 January 2005 and entered active duty on 7 June 2005.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing.
- Her DD Form 214 show she was discharged on 28 June 2005, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), by reason of failure to meet procurement medical fitness standards. She was credited with 22 days of net active service this period.

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 harassed by her recruiter, and he threatened to rape and kill her if she told anyone. During medical in-processing, it was discovered that she had a cornea transplant. She reported she was sent back to the barracks but continued going through the process with the rest of her platoon. She stated that during a platoon briefing, she was pulled out by a female Captain and asked if she wanted to continue with basic with her platoon. She hesitated in answering, but then told the Captain, "NO." At that point, she went into "stay over" in preparation for discharge. She reported severe anxiety, nightmares, sleep difficulty, and loss of appetite, and a fellow soldier attempted to sexually assault her. She reported these symptoms still impact her today, and she has undergone counseling related to anger problems. The application did not include any medical or mental health records. 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 no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she experienced MST during her recruitment and while in basic training. There is no evidence, beyond self-report, of a mental health condition while on active service or after discharge.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition on active service, the applicant asserts a fully mitigating BH experience, MST. She asserts that this experience influenced her decision to not continue with basic training, and she describes the typical symptoms associated with trauma exposure. However, her history of cornea surgery and nondisclosure of it, when she went through MEPS, may still have been the primary factor in her discharge.

g. The applicant contends she experienced MST and a mental health condition that mitigates her discharge, and per Liberal Consideration her assertion of MST alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Soldiers in the U.S. Army Reserve are authorized an honorable discharge while in entry-level status only if they complete their active duty schooling and earn their designated military occupational specialty. The applicant did not complete training and was released from active duty due to failure to meet procurement medical fitness standards. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated her discharge. The Board determined her DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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, USC, 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, USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.
4. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.
5. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.
 - b. Paragraph 3-7a provides that 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.

c. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. 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.

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, 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//