

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20240000556

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge to honorable
- amendment to the narrative reason of separation to secretarial authority

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

- DD Form 149 (Application for Correction of Military Record), 30 October 2023
- Applicant Self-Authored Statement
- Counsel Statement
- Memorandum, Chaplain, Headquarters and Headquarters Service Battery, 6th Battalion, 27th Field Artillery, 13 December 1995, (Recommendation for Discharge)
- DA Form 4856 (General Counseling Form), 29 February 1996
- SF 600 (Chronological Record of Medical Care), 16 July 1996
- SF 513 (Medical Record), 16 July 1996
- Soldier Statement, 21 October 1996
- Six pages of separation package documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 December 1996
- Army Discharge Review Board (ADRB) Docket Number AD98-01819, 18 November 1998
- ADRB letter, 20 November 1998
- Four letters of reference

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, through counsel:

a. She began her service on 27 April 1996. Her chaplain recommended her discharge because she was suffering from depression and had been experiencing trouble sleeping and changes to her appetite. Her chaplain also noted she did not care about anything including possible repercussions if she went absent without leave (AWOL) or refused orders. Part of her struggle was her separation from her children. Her chaplain opined he did not believe that more time in service would bring about a positive adjustment. The applicant's record does not indicate what, if anything, was done with his recommendation.

b. Despite her struggles she performed well. A monthly performance counseling dated 29 February 1996 reflects she was above average and she was a team player.

c. On 16 July 1996, she sought care for mental health symptoms. The health notes state she was experiencing significant psychosocial stressors and may require medication or therapy. The records state she had adjustment disorder with mixed expressive and anxious feature but her condition was not urgent.

d. On 20 September 1996, she absented herself from her place of duty without permission. She wrote a letter to her state senator on 21 October 1996, requesting help. She explained her mother would not return custody of her 3 year old daughter without a court order. The JAG office recommended a civilian attorney and she borrowed money to retain an attorney but was advised to get an apartment to regain custody, which she could not afford. She was a good Soldier but was struggling mentally and emotionally.

e. In October 1996, she was charged with absenting herself from her unit. She requested discharge and the discharge was approved the same day with an under other than honorable conditions characterization.

f. She suffered a material injustice when the Army failed to discharge her following the chaplain's recommendation. She demonstrated signs of a mental health condition and sought help from the appropriate channels but not help was forthcoming. She was not provided the support and treatment she required.

g. The applicant has provided a letter explaining her actions along with letters from others who know her. She truly regrets that she made the decision she did but she saw no other option. She has worked hard since her discharge overcoming the burden of homelessness and the stigma of the discharge itself. She served honorably for the short time that circumstances allowed her to serve.

3. The applicant states:

a. When she first decided to go into the military, she signed custody of her children to her mother. She completed basic combat training and advanced individual training;

she kept a 300 fitness score and was the platoon guide in the company; she was sent to her permanent duty station at Fort Sill. She was recommended for the position of night baker and went in the evening without supervision to prepare all the pies, cakes and cookies. She was dedicated and was going to be all she could be.

b. Her mother was given a breast cancer diagnosis and told she had 6 to 9 months to live. The day she got the news was the worst day of her life. She will never regret spending the last 6 months with her. Upon her mother's passing the custody of her was in question. She was in court battle for her children with her siblings and father. She made the choices that seemed right. She had been subjected to nasty custody battles as a child. She hurt others emotionally and has been hurt more times than seems fair.

c. Her decision to leave the military was not one she took lightly. She did try to speak to the correct people. Once she was against the wall, she made a decision. She is not hot-headed but kind to others and supportive. She knew of her mother's husband being addicted to her mother's pain medication upon finding out he would lose his wife. Her children needed her to return home and a healthy environment for them. Her mother's husband lost custody of the children to a complete stranger and she would not let her see or speak with them. Losing them to a complete stranger who had no intention of her ever seeing them again was not something she was going to let happen. She spent the next 5 years fighting for her children to no avail. She apologizes for leaving the military. She was under extreme duress at the time of her discharge. These times were what made her who and what she is today. She is strong and smart and family oriented.

d. Since her military service she has worked as a certified nurse assistant for 15 years on and off. She was then employed by a nursing facility to be a purchasing coordinator. She has been working the last 12 years and is currently employed as a coach operator for a public transportation organization. She is not the person she was when she was in the Army.

4. The applicant, through counsel, provides:

a. A letter from the chaplain, HHS Battery, 6th Battalion, 27th Field Artillery, dated 13 December 1995, addressed "to whom it may concern" with a subject, recommendation for discharge. The chaplain notes the applicant was very depressed as a result of being in the Army. She experienced difficulty in adjusting even through basic and advanced training. She had not slept well in the past 3 months, had an increase in appetite, and didn't care about anything, including discipline if she went AWOL or refused other orders. Part of her inability to accept the military environment was due to being separated from her three children. She felt being controlled and like being in a prison and constantly felt like going AWOL. Her chaplain did not believe more time in service would bring about a positive adjustment.

b. A counseling form dated 29 February 1996, in which her evaluation generally noted her performance was good and she was shaping up to be a team player. She needed improvement in military education but was doing a fine job.

c. An SF 600, dated 16 July 1996, noting she was evaluated for symptoms due to stress and overwork. She was evaluated with adjustment disorder and mixed depressive/anxious features. Was advised to follow-up and make an appointment.

d. An SF 513, dated 17 July 1996, noting she presented with significant psychological stressors. A provisional diagnosis of adjustment disorder with (illegible) features. She did not present with any psychiatric features that required urgent psychiatric care. She was assessed with adjustment disorder with occupational dissatisfaction. No follow-up was planned for her because she declined services.

e. A letter dated 21 October 1996, in which she wrote to Mr. [REDACTED] requesting assistance for discharge, outlining her efforts to seek discharge through her command, her mental and emotional difficulties, and her worry that her stepmother had custody of her child and was raising her child as her own daughter.

f. Four letters of reference from people who have known her for varying lengths of time, and supporting her efforts to upgrade her discharge

5. A review of the applicant's service records show:

a. On 27 April 1995, she enlisted in the Regular Army for 3 years. She completed Basic Combat Training, she completed Advanced Individual Training, and she was awarded military occupational specialty 92G (Food Service Specialist).

b. She attained the grade/pay grade private first class/E-3.

c. On 20 September 1996, she was reported AWOL from her unit.

d. On 21 October 1996, she was dropped from the rolls and her status was reported as a deserter.

e. On 23 October 1996, she surrendered to military authorities at Fort Sill and her status was changed to present for duty.

f. On 24 October 1996, court-martial charges were preferred against her. A DD Form 458 (Charge Sheet) shows she was charged with one specification of AWOL from Headquarters Battery, 75th Field Artillery Brigade, Fort Sill from 20 September 1996 to 23 October 1996.

g. After consulting with legal counsel on 24 October 1996, she voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In doing so, she acknowledged that the charges preferred against her under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. She further acknowledged:

- she had not been subjected to coercion with respect to her request for discharge
- she had been advised of the implications that were attached to it
- by submitting the request, she was acknowledging she was guilty of the charge(s) against her or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- she could be discharged under other than honorable conditions and she could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- she could be deprived of many or all Army benefits and she could be ineligible for many or all benefits as a veteran under both Federal and State laws
- she could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- she was advised he could submit any statements she desired in her own behalf, and elected not to do so
- she elected not to undergo a physical evaluation prior to separation

h. On the same date, she completed a memorandum for the commander, Battery A, Personnel and Support Battalion, indicating she declined to undergo a medical examination for separation from active duty.

i. On 21 November 1996, the commander recommended approval of her request for discharge. The commanding officer noted she had been charged with one specification of AWOL for 31 days, she had surrendered to military authorities, and she had become disillusioned with the military.

j. On 26 November 1996, separation authority approved her request for discharge, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He directed the applicant's reduction to the lowest enlisted grade and her discharge with an under other than honorable conditions character of service.

k. On 30 December 1996, she was discharged. Her DD Form 214 shows she completed 7 months and 1 day of active service [this is an error that will be addressed in Administrative Note(s) below] and she was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. Her service was

characterized as under other than honorable conditions. She had 33 days of time lost from 20 September 1996 to 22 October 1996 and she had 69 days of excess leave from 24 October 1996 to 30 December 1996. She was awarded the Army Service Ribbon and the Marksman Marksmanship Qualification Badge with Rifle Bar.

6. On 18 November 1998, the ADRB determined her discharge was both proper and equitable and voted not to grant her requested relief for an upgrade of her discharge.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under other than honorable conditions (UOTHC) to honorable. She contends she experienced a mental health condition 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 27 April 1995.
- The applicant had court-martial charges preferred against her for being AWOL from 20 September to 23 October 1996. She voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200, chapter 10.
- The applicant was discharged on 30 December 1996 and completed 1 year, 7 months, and 1 day 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 experiencing a mental health condition, which mitigates her misconduct. She discussed family difficulties, including custody issues with her three children as well as her mother's cancer diagnosis, as some of the events leading up to her decision to be AWOL. The application included a memorandum from a chaplain dated 13 December 1995, which showed the applicant was experiencing symptoms of an adjustment disorder due to the separation from her children. Medical documentation dated 16 July 1996 showed the applicant complained of stomach problems and noted worries and stress related to separation from her children and inability to bring them to her duty station because she did not have custody of them. She was given a diagnosis of Adjustment Disorder with mixed depressive/anxious features, and she was referred for behavioral health treatment. She was seen on the same day by a psychologist and

declined follow up, indicating she would pursue administrative discharge with her command. A letter written by the applicant dated 21 October 1996 provides documentation of her situation, noting that she was pursuing a hardship discharge but could not get approved because she did not have custody of her children. She stated that she had seen mental health and the chaplain, who had both recommended discharge, but her command was not approving it. There was sufficient evidence that the applicant was diagnosed with a mental health 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 sufficient evidence to support that the applicant had a mental health condition, but her condition only partially 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 a mental health condition at the time of the misconduct. Documentation provided in the application showed she had been diagnosed with an Adjustment Disorder with anxiety and depressed mood by a DoD physician and a psychologist, and that the chaplain had recommended discharge because of this condition.

(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.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. Documentation from the applicant's time in service showed that she had been diagnosed with an Adjustment Disorder, and it was recommended by the chaplain that she be discharged in order for her condition to improve. There is also documentation by a medical provider indicating the applicant stated she would pursue an administrative discharge, and she declined follow up with a mental health provider. While she does have sufficient evidence to show the presence of a mental health condition, such a condition or experience does not absolve her from knowing the difference between right and wrong and acting in accordance with the right.

g. However, the applicant contends she was experiencing mental health condition or an experience that mitigated her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation, the post-service character evidence provided by the applicant, and the partial mitigation found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable and to change the narrative reason for separation to Secretarial Authority.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: JFF
- Reentry Code: No change
- Narrative Reason for Separation: Secretarial Authority

2. The Board noted the administrative note below from the analyst of record and recommended that change also be completed to more accurately reflect the military service of the applicant.

3/6/2025

X

CHAIRPERSON

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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 contains an error in her date of entry and a related error in her total active duty service. These errors will be corrected by issuance of a DD Form 215 (Correction to DD Form 214).

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 policies, standards, and procedures to ensure the readiness and

competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments

- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

c. Chapter 5-3. Secretarial Authority. The separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army (SA). Except as delegated by this regulation or by special DA directives, it will be accomplished only by the SA's authority. The separation of any enlisted member of the Army under this authority will be based on an SA determination that separation is in the best interests of the Army.

3. Army Regulation 635-5-1 (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 "KFS" corresponded to "In lieu of trial by court-martial," and the authority, Army Regulation 635-200, chapter 10.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes. Table 3-1 (U.S. Army reentry eligibility codes) reads:

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

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 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 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.

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. 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.

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//