

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20240000739

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge
- in effect, amendment of his narrative reason for separation to reflect disability
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) 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 her command gave her an under other than honorable conditions characterization of service while she was experiencing anxiety; her entire situation resulted from the mishandling of her issues with the local police.

a. The applicant maintains that her chain of command was so focused on discharging her, they never asked her about the emotional trauma she was experiencing, even though she told them several times she needed medical help.

b. Additionally, the applicant declares her rear detachment leadership did not adequately represent her because, at the time, her actual chain of command was deployed. She points out that she volunteered to go to Iraq, and she went through "PT" to ensure she would be able to go. Her leadership threatened her with no pay due and nonjudicial punishments (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). As a single mother with an estranged husband, her nerves were bad and she felt that these men were once again messing me over. She felt that if she was treated for anxiety after going to the doctor before any deployment efforts, she

would have been able to make sound decisions or have trust in my chain of command (MEN) around me.

3. A review of the applicant's service record shows:

a. On 12 November 2002, the applicant enlisted into the Regular Army. On 15 December 2004, the applicant immediately reenlisted.

b. On 18 January 2005, a homicide occurred in the local community, and, on an unknown later date, the civilian police began to consider the applicant as a person of interest. On 19 February 2005, the applicant deployed to Iraq. On 14 April 2005, the applicant accepted NJP for having been absent in February 2005 from replacement training for Operation Iraqi Freedom at Fort Stewart, GA.

c. On 1 May 2005, the applicant redeployed and her unit placed her on emergency leave until 23 May 2005. At about 1315, on 25 May 2005, the applicant stopped by her first sergeant's (1SG) office and told him she was on her way to the airport for the return flight to Iraq. About 1830, the applicant called the 1SG to say she had missed her flight because the local police had detained her for questioning.

d. On 5 June 2005, the applicant left a voicemail for her 1SG, telling him she was not going to meet him at the airport for her return flight to Iraq; instead, she was going to turn herself in at a mental institution because she needed help with her personal problems. After three attempts to call the applicant back, she finally answered the phone. The 1SG tried unsuccessfully to convince the applicant to go to the airport. On 6 June 2005, First Lieutenant (1LT) D__ G. G__ tried but was unable to locate the applicant after contacting all of the major hospitals in the area. On 6 June 2005, the unit reported the applicant as absent without leave (AWOL). On 5 July 2005, after a 29-day absence, the applicant returned to military control at the unit.

e. On 12 July 2005, the applicant's command preferred court-martial charges against her for two specifications of missing movement; the respective dates listed in the charges were 25 May 2005 and 6 June 2005 (sic).

f. On 4 August 2005, an investigating officer convened a hearing, under the provisions of Article 32 (Investigation), UCMJ; the applicant was present and represented by counsel.

(1) Captain (CPT) D__ R. S__, the officer who preferred court-martial charges against the applicant, testified that the applicant had missed two flights bound for Iraq, and he described what he had learned about the circumstances.

(a) CPT S__ stated the local police had confirmed the applicant did not arrive at the police station until around 1500, and the applicant failed to advise her chain of command of her intentions to go to the police station prior to her flight's departure.

(b) After obtaining another airline ticket for the applicant, the applicant's leadership advised her, on 3 June 2005, that her return flight to Iraq was leaving on Sunday, 5 June 2005, and that they would see her at the airport. However, on Sunday morning, the 1SG received a voicemail from the applicant saying she would not make it to the flight; she referenced suicide and said she was going to check herself in to a hospital. The 1SG went to the airport to see if the applicant would show up; when she did not arrive at the airport and was also absent from duty, on Monday, 6 June 2005, the unit reported her as AWOL.

(c) 1LT D__ G. G__ was unable to locate the applicant in any of the major hospitals in the area. In late June, the applicant emailed CPT S__ and disclosed she was working through her issues and appreciated that the unit was allowing her the time to do so; she said she would report back to the unit, on 1 July 2005. CPT S__ responded that the applicant had been reported as AWOL and needed to return immediately. The applicant ultimately came back, on 5 July 2005.

(2) Sergeant First Class (SFC) F__ M__ essentially confirmed the sequence of events provided by CPT D__ R. S__. He added that his first impression of the applicant was that she was "squared away," and he never heard anything bad about her until 2005.

(3) Detective R__ M__, from the local police, testified he was investigating a case in which the applicant was a person of interest. On 25 May 2005, the police called the applicant in the morning to come in for an interview. The applicant came to the station later that afternoon, and, around 1445, the police conducted a "noncustodial interview"; the interview lasted about 45 minutes, and the applicant was not under arrest. The detective stated he did not wish to disclose any of the details of his case.

g. On 8 September 2005, after consulting with counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial under Chapter 10, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). In her request, she stated no one had subjected her to coercion, and counsel had advised her of the implications of her request. The applicant further acknowledged she was guilty of at least one of the charges against her, and she elected to submit statements in her own behalf; however, that statement is unavailable for review.

h. On 14 September 2005, the separation authority approved the applicant's separation request and directed her under other than honorable conditions discharge; in

addition, he ordered her reduction to the lowest enlisted grade. On 27 September 2005, orders discharged the applicant accordingly.

i. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), as amended by a DD Form 215 (Correction to DD Form 214), shows she completed 2 years, 9 months, and 15 days of active service. Her DD Form 214 also shows in:

(1) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- National Defense Service Medal
- Army Service Ribbon
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

(2) Item 18 (Remarks) lists her deployment to Iraq, from 20050219 to 20050501, but does not show her continuous honorable service, from 20021112 to 20041214.

(3) Item 29 (Dates of Time Lost During this Period). 20050606-20050705 (sic; should be 20050704).

j. On 20 June 2008, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service.

(1) The applicant stated she wanted to reenlist into the Army, and she wanted her children to be proud of their mother. Because her commander had threatened her with punishments, she felt isolated and depressed and made some irrational decisions. As of the date of her application, she was working for the city doing the same type of work she had done in the Army: water purification. She added that the local police had closed its case against her because they had found their suspect.

(2) On 10 April 2009, the ADRB determined the applicant's discharge had been proper and equitable and denied her request for an upgrade.

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The VA and the Army (under the Department of Defense) operate under separate provisions of Federal law (respectively Title 38 (Veterans' Benefits) and Title 10 (Armed Forces)). As such, each makes independent determinations, based upon the requirements set forth within their respective parts of the law and their own internal

regulations. Determinations made by the VA are not binding on the Army and do not indicate an error on the Army's part.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to her under other than honorable conditions (UOTHC) characterization of service. She contends she experienced an undiagnosed mental health condition, including PTSD, and sexual harassment/assault (MST) 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 12 November 2002 and reenlisted on 15 December 2004.
- The applicant deployed to Iraq on 19 February 2005 and accepted NJP for having been absent in February 2005. As a result of a series of events related to the applicant being a person of interest in a homicide investigation, she was AWOL from 6 June 2005 to 5 July 2005.
- On 8 September 2005, after consulting with counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial under Chapter 10, Army Regulation (AR) 635-200.
- The applicant was discharged on 27 September 2005 and was credited with 2 years, 9 months, and 15 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 experiencing anxiety related to the mishandling of an investigation by the Savannah, Georgia police department, and she attributes her behavior to lack of support by the rear detachment command and requests for medical attention that she did not receive (see ROP for full details). The application contained a Disability Decision Letter from the VA dated 25 May 2023, which indicated she is service connected "for treatment purposes only" for Generalized Anxiety Disorder. 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 is service connected for Anxiety at 0%. DoD documentation dated 11 July 2005 showed that the applicant presented to primary care with "panic attacks" and heart palpitations. She reported a three-year history of panic attacks and an increase in episodes "before going to Iraq." She reported shortness of breath, tingling sensations, and migraine headaches induced by stress. She was diagnosed with Anxiety Disorder due to a medical condition, panic attacks, and she was referred to "psych" and prescribed Zoloft. There is also DoD documentation dated 17 Jul 2013 indicating request for refill of

anxiolytic for panic attacks. She was seen again on 5 September 2013 and reported anxiety associated with her husband's pending separation from the military and financial worries. She was diagnosed with Anxiety Disorder and given a referral to community outpatient clinic. A Compensation and Pension evaluation dated 6 July 2022 was reviewed, and the applicant reported insomnia while in Iraq and discussed marital difficulties. However, she became tearful and refused to discuss her mental health while in service. She indicated she did not understand the exam process, noting she did not think she had to talk about her mental health from her time in the service, and she was uncooperative with the interview. The evaluator concluded that she did not have depression but did have a history of diagnosis of Anxiety Disorder and noted "a normal reaction to such serious legal problems would be a transient adjustment disorder with possible anxiety due to the ramifications."

e. The applicant engaged VA mental health care on 30 November 2023, and she reported a history of mental health treatment outside of DoD or VA. She reported being on an ADHD medication, an anxiolytic, and an antipsychotic. She discussed, at length, childhood trauma history as well as her observations of sexual harassment or "quid pro quo" while in the military. Although she did not report experiencing this directly, she discussed the challenges created in having a trusting environment with men who were in authority in the military because of what she witnessed. She also reported deployment related trauma exposure while in Iraq and discussed nightmares and intrusive memories associated with that event. Documentation discussed difficulty in building trust, and symptoms of irritability, depression, anxiety and hypervigilance, as the primary focus of treatment. She had three subsequent psychiatry visits and two psychotherapy sessions between November 2023 and February 2024 before "no showing" and failing scheduling attempts. Documentation indicated she was continuing to see a non-VA mental health provider for medication and there were changes to medication to eliminate the antipsychotic for sleep and start a medication more commonly used to treat sleep difficulty. Diagnoses remained "provisional" or "rule out" due to difficulty in fully assessing symptoms, but the provisional diagnoses were PTSD, Anxiety Disorder, and Mood Disorder. A review of medication history showed various medications used to treat anxiety dating back to September 2005.

f. 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.

g. 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, including PTSD, and had experienced MST at the time of the misconduct. There is documentation from her time in service that she was diagnosed with Anxiety

Disorder and treated for panic attacks. The applicant has also been treated for anxiety by the VA and has a service connection for 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, and DoD medical documentation supports that she had been experiencing panic attacks and anxiety.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical records revealed documentation of panic attacks and a diagnosis of Anxiety Disorder while on active service, and the documentation noted that she reported having had panic attacks for the previous three years. Additionally, she has been diagnosed and treated for Anxiety Disorder by the VA, and she is service connected for this condition. The applicant also reported a fully mitigating experience, MST. As there is an association between MST and avoidant behavior, there is a nexus between her experience of MST and her offense of being AWOL, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. The Board considered the medical records and conclusions of the advising official. One possible outcome was to approve the applicant's request based upon guidance for consideration of discharge upgrade requests. However, the Board determined that they did not agree with the medical advisory opinion in that the applicant's basis for separation was only partially mitigated. The applicant intentionally missed her flight to Iraq and subsequently missed movement. Based upon a preponderance of the evidence, and notwithstanding the recommendation of the advisory official, the Board determined the character of service and the narrative reason for separation the applicant received upon separation were not in error or unjust.

2. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on her DD Form 214 and recommended that change be completed to more accurately show her period of honorable service by granting a partial relief to correct the applicant's records.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 27 September 2005 by adding the following entries in item 18 (Remarks): CONTINUOUS HONORABLE SERVICE FROM 20021112 until 20041214.

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 an upgrade of the applicant's under other than honorable conditions discharge.

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): N/AREFERENCES:

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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
3. AR 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. An honorable discharge could be furnished when disqualifying entries in the Soldier's military record was outweighed by subsequent honest and faithful service over a greater period of time. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.
 - b. Paragraph 3-7b (General Discharge). 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. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

d. Chapter 10 permitted Soldiers to request discharge in lieu of trial by court-martial when they had committed an offense or offenses that, under the Manual for Courts-Martial, included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred and up to the point that the convening authority approved the sentence. Once the separation request was approved, an under other than honorable conditions discharge was normally furnished, but the discharge authority could direct a general discharge, when warranted.

4. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribed policies and procedures for enlisted promotions and reductions. In chapter 7, it stated Soldiers approved for an under other than honorable conditions discharge were to be reduced to the lowest enlisted grade.

5. The Manual for Courts-Martial, United States, Appendix 12 (Maximum Punishment Chart), in effect at the time, showed a punitive discharge was an available maximum punishment for violating Article 87 (Missing Movement Through Design), UCMJ.

6. AR 40-400 (Patient Administration), then in effect, stated Soldiers with medical conditions or physical defects that were usually progressive in nature and the expectations for reasonable recovery could not be established were to be referred to a medical evaluation board (MEB). Those individuals determined by the MEB to fail the medical retention standards outlined in AR 40-501 (Standards of Medical Fitness) were referred to a physical evaluation board (PEB) for a fitness determination.

7. AR 635-40 (Disability Evaluation for Retention, Retirement or Separation) then in effect, prescribed policies, and procedures for disability separations.

a. Paragraph 3-1 stated the mere presence of an impairment did not, of itself, justify a finding of unfitness due to a physical disability. Each individual Soldier's case had to be assessed to determine whether the nature of the disability caused the Soldier to become unable to perform the duties expected of a Soldier of his/her rank.

b. PEBs were charged with investigating the nature, cause, degree of severity, and probable permanency of a Soldier's disabling conditions; assessing the Soldier's physical conditions against the physical requirements of the Soldier's particular office, grade, rank, or rating; and making findings and recommendations in accordance with the law.

c. The PEB's available dispositions for the Soldier were:

- returned to duty
- separated with severance pay when the combined disability rating was 20 percent or less
- Concerning combined ratings of 30 percent or more: when the PEB could not confirm the permanency of a disabling condition, it recommended the Soldier for the Temporary Disability Retired List; conditions not likely to change over time resulted in placement on the Permanent Disability Retired List

8. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (RE Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

9. AR 635-5-1 (Separation Program Designator Code) in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have, "In Lieu of Trial by Court-Martial" entered in item 28 of their DD Form 214.

10. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "KFS" has a corresponding RE code of "4."

11. AR 601-210 (Regular Army and Reserve Components Enlistment Program) in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers. Table 3-1 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

12. 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.

13. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

14. 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.

15. AR 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//