

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20240001004

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is requesting an upgrade due to undiagnosed post-traumatic stress disorder (PTSD) and military sexual trauma (MST). She experienced sexual harassment and MST continually in the active and reserve components. She told her command about the MST. She had to remain in the unit with the aggressor for three years and six months. Sexual offenses occurred continually, and she was discharged thereafter. The applicant notes she has a Department of Veterans Affairs (VA) disability rating of 80 percent (%).
3. The applicant's complete military records are not available for review; therefore, this case is being considered using limited documentation.
4. The applicant enlisted in the Regular Army on 5 March 2003. Upon completion of initial entry training, she was awarded military occupational specialty 92Y (Unit Supply Specialist). She reenlisted on 14 October 2005. The highest rank she attained was specialist/E-4.
5. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review. However, a DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was released from active duty and transferred to the U.S. Army Reserve Control Group on 7 July 2006 under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 8,

by reason of pregnancy or childbirth. Her characterization of service was under honorable conditions (General), with separation code MDF and reentry code RE-3. She completed 3 years, 4 months, and 3 days of active service.

6. The applicant's service record contains two additional orders which show she was transferred out of the Individual Ready Reserve to a Troop Program Unit on 23 February 2007, and she was transferred from the 374th Chemical Company to the 416th Civil Affairs Battalion on 10 July 2009.

7. On 23 July 2024, the Army Review Boards Agency (ARBA) sent an email to the applicant requesting a copy of her VA disability rating and medical documentation related to her mental health issues. To date, no additional documentation has been received.

8. On 5 August 2024, in the processing of this case, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no MST/Sexual Harassment records pertaining to the applicant.

9. Regulatory guidance states enlisted women who are medically diagnosed as being pregnant may, after the unit commander has counseled her concerning her options, entitlements, and responsibilities, voluntarily request separation under AR 635-200, Chapter 8, by reason of pregnancy. If the Soldier is beyond entry level status, service will be characterized as honorable or under honorable conditions (General), as appropriate.

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

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under honorable conditions (general) characterization of service. She contends MST-related PTSD 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 Regular Army on 5 March 2003. She reenlisted on 14 October 2005.
- Applicant's complete military records are not available for review; therefore, this case is being considered using very limited documentation.
- The complete facts and circumstances surrounding the applicant's discharge is not available for review. However, a DD Form 214 (Certificate of Release or

Discharge from Active Duty) shows she was released from active duty and transferred to the U.S. Army Reserve Control Group on 7 July 2006 under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 8, by reason of pregnancy or childbirth. Her character of service was under honorable conditions (general), with separation code MDF and reentry code RE-3. She completed 3 years, 4 months, and 3 days of net active service this period.

- Applicant's service record contains two additional orders which show she was transferred out of the Individual Ready Reserve to a Troop Program Unit on 23 February 2007, and she was transferred from the 374th Chemical Company to the 416th Civil Affairs Battalion on 10 July 2009.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, she is requesting an upgrade due to undiagnosed post-traumatic stress disorder (PTSD) and military sexual trauma (MST). She experienced sexual harassment and MST continually in the active and reserve components. She told her command about the MST. She had to remain in the unit with the aggressor for three years and six months. Sexual offenses occurred continually, and she was discharged thereafter. The applicant notes she has a Department of Veterans Affairs (VA) disability rating of 80 percent.

d. Active-duty electronic medical records available for review show the applicant participated in a medical encounter on 22 November 2005 and reported disrupted sleep, she was diagnosed with Insomnia. The note further indicates the applicant was pregnant. The applicant was assessed by behavioral health on 1 March 2006, due to psychosocial and occupational issues. A note dated 9 March 2006, indicates the applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood and received supportive counseling related to occupational problems. The medical record further indicates she experienced significant medical complications of pregnancy. A social work note dated 11 July 2006, indicates she had left active-duty and was relocating to her family home. The applicant was not seen again for 5 years with a note dated 29 July 2011, indicating the applicant was on activated reserve status with her unit and was command referred for an evaluation due to suicidal ideation. During the assessment, the applicant reported incidents with her supervisors resulting in her making a statement about attempted suicide of other members. This statement was taken by her command as a potential suicidal statement. She adamantly denied suicidal ideation, plan, or intent but appeared frustrated by her command's treatment of her. The clinician noted, "she appears to be assertive to the point that she likely speaks out and speaks her wishes to the detriment that she may be perceived as disrespectful or insolent." The applicant did not meet criteria for any mental health disorder at that time.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 80% service connected, including 70% for PTSD. The applicant initiated behavioral health services in July 2012, via the VA related to issues with housing insecurity and homelessness. The applicant participated intermittently in behavioral health services and a mental health consult, dated 11 February 2015, shows she was accepted into the Trauma Recovery Services (TRS) a specialized PTSD treatment program. The applicant reported, "while in the Army she had her first boyfriend at age 18. She wanted to wait until marriage to have sex, but one day he physically and sexually assaulted her. She reported the event, but her supervisor did not take any action because the perpetrator had a long military career. She was forced to work in the same unit with the perpetrator for 2 years before she was allowed to transfer." The applicant participated intermittently in behavioral health services and a hospital discharge summary, dated 8 May 2020 indicates she was admitted on 18 April 2020 due to mood instability and psychosis. She was diagnosed with Psychosis, NOS, and it was noted she had a history of PTSD, MST, and childhood trauma. The applicant continues to receive treatment via the VA although her participation is inconsistent. She is currently diagnosed with Bipolar Disorder with psychotic features and PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an experience of MST and a subsequent mental health condition that mitigates her discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST and is service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts experiencing MST while in military service and she is 70% service connected for PTSD. Her active-duty electronic medical record shows she was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's reason for discharged is unclear based on the available record, however, her DD Form 214 indicates she was discharged by reason of pregnancy or childbirth. The medical record appears to indicate the applicant experienced mental health difficulties that impacted her behavior as a soldier. Overall, it is more likely than not, had the applicant not experienced MST during military service, she would have been able to successfully complete the term of her enlistment with an honorable characterization of service at the time of discharge.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant was separated for pregnancy or childbirth. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had an experience of military sexual trauma and a subsequent mental health condition that mitigates her discharge. Based on the applicant's assertion and the medical review, the Board granted relief to upgrade her discharge to honorable.

2. Prior to closing the discussion, the Board noted the applicant's continued honorable service from 5 March 2003 to 7 July 2006, a period of 3 years, 4 months, and 3 days and voted to award the applicant the Army Good Conduct Medal (First Award) for this qualifying period.

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:

The Board determined the evidence presented is sufficient to warrant 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 7 July 2006 by:

- awarding the applicant the Army Good Conduct Medal (First Award) for the qualifying period 5 March 2003 to 7 July 2006
- adding to item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal (First Award)
- amending item 24 (Character of Service) to show honorable

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 (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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 8 establishes policy and procedures and provides authority for the voluntary separation of enlisted women because of pregnancy. This chapter applies to all Active Army enlisted women, Army National Guard, and U.S. Army Reserve enlisted women ordered to active duty. Enlisted women who are medically diagnosed as being pregnant may, after her unit commander has counseled her concerning her options, entitlements, and responsibilities, request separation under this chapter.

b. If a Soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions per Chapter 3, Section III. Prior to characterization as under honorable conditions, the soldier shall be advised of the specific factors in the service record that warrant such a characterization and the notification procedure shall be used.

c. 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.

d. An under honorable conditions (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.

5. 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. 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.

6. 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//