

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20240001104

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions character of service to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Florida Certification of Birth

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 superiors verbally and physically harassed her, affecting her performance. She reported the incidents, including being physically assaulted by Sergeant H., which led to a mental breakdown. Her recruiter told her she could bring her daughter after basic training, but when her daughter arrived, the applicant was forced to send her back to Florida because she was not married. She claims she was denied due process, unlike her peers, and was forced to work overnight for three years in a toxic environment without a normal schedule or basic allowances, creating a financial burden. The discharge, she argues, is limiting her job opportunities, despite her previous productive civilian life. She loved the Army and wanted to stay and retire.

3. The applicant provide a Certification of Birth for her child born in 1986.

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

- a. She enlisted in the Regular Army on 12 November 1992.

b. On 29 March 1994, she accepted nonjudicial punishment for:

- Wrongfully endeavoring to influence the action of Sergeant (SGT) [REDACTED] in the case of the applicant by giving SGT [REDACTED] the sum of \$100 if he would forget an incident when speaking to the commander. Her punishment included reduction to private (PVT)/E-1 (suspended for 120 days) and 14 days extra duty.
- Wrongfully endeavoring to influence the action of Private First Class (PFC) [REDACTED] in the case of the applicant by giving PFC [REDACTED] the sum of \$100 if he would forget an incident when speaking to the commander.

Her punishment consisted of 10 days of extra duty, forfeiture of \$100 for 1 month, and reduction to pay grade E-2 (suspended).

c. On 12 May 1995, a DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) shows in item 5 (Vacation of Suspension) suspension of the punishment of reduction to pay grade E-2 was vacated because, on 5 April 1995, the applicant failed to go at the time prescribed to her appointed place of duty.

d. The service record includes the applicant had a medical examination, dated 7 June 1995, for the purpose of separation.

- Standard Form 88 (Report of Medical Examination)
- Standard Form 93 (Report of Medical History)

e. On 5 July 1995, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) Chapter 13, paragraph 13-1, for unsatisfactory performance / minor misconduct. The reasons for his proposed actions are the applicant was unable to perform in all aspects of her military occupational specialty, failure to report, disrespect, disobeying orders an unsatisfactory duty performance with minor infractions of misconduct. He recommended her service to be characterized as under honorable conditions.

f. On 5 July 1995, the applicant refused to sign the acknowledgement.

g. On 14 July 1995, the applicant consulted with legal counsel and was informed of her rights. She refused to sign the election of rights.

h. On 10 July 1995, the applicant submitted a statement. She stated she was providing this rebuttal to provide her perspective on the events that transpired throughout her military career. When she first enlisted, she had high expectations,

which remain to this day. Early in her service, she received a Leadership Award during basic training and was appointed as squad leader during advanced training. Upon arrival at her duty station, she was granted permission to move into housing with her daughter for the first six months of her assignment. Within those first six months, several leaders in her section approached her. After rejecting their advances, she was informed that her daughter could no longer stay with her due to her enlistment contract. The applicant asserts that she was coerced into signing documents to send her child to live with her mother, although she did not agree with this decision. She sought legal counsel from the Judge Advocate General's office to understand her rights, but her chain of command disapproved of her actions.

(1) Subsequently, she was informed that her promotion was being deferred due to poor duty performance, despite having no negative counseling statements. When she inquired with her training command, she began receiving counseling statements indicating mistakes and poor performance. Her requests for reassignment to another section were ignored, and she felt she was being deliberately singled out and alienated. Although placed under evaluation, she claims no one properly trained or supervised her during this time.

(2) The applicant enrolled in full-time college courses at Dera University and completed correspondence courses to demonstrate her motivation to her chain of command. Despite her efforts, rumors began circulating within her unit that she had a sexually transmitted disease. These rumors, spread by her NCOs, led to her being ordered to see a physician and take shots, a situation that prompted her to seek legal assistance to stop the false accusations.

(3) Throughout her time at the unit, she felt blacklisted and targeted. She was repeatedly counseled for mistakes, but claims she was never given guidance on how to correct her performance. She was also told that once she was promoted to E4 or reenlisted, she could regain custody of her child. However, she continued to experience setbacks, including being placed on night shifts alone and later receiving an article 15 for an incident involving inappropriate attire in her barracks room. The applicant admits she made a mistake by offering money to avoid punishment, as she was desperate to regain custody of her child and secure her promotion. She later discovered that the information she had received about her article 15 was inaccurate, but it resulted in further delays to her promotion.

(4) Despite being placed on day shifts in January 1995, the applicant continued to receive frequent counseling, which she believes was unjustified. She was eventually directed to seek advice from Staff Sergeant Hunter, who recommended she contact

Equal Opportunity (EO) and report the harassment. She did so, but this only intensified the scrutiny and rumors surrounding her.

(5) In March 1995, she received another Article 15 for failing to attend a GI party, which she claims she was unaware of. She attempted to contest this by providing statements from soldiers who also missed the event, but she was one of only two individuals who received punishment. When she asked for a court martial, her commander discouraged her by stating she could not afford a lawyer, and the punishment was imposed.

(6) The applicant states that her situation worsened after she married Staff Sergeant H in May 1995. Her work schedule was changed to include night shifts, while she was also required to attend classes and work more hours than her peers. She made several attempts to address these concerns with her chain of command but received no support. She claims that the harassment persisted, and her leadership seemed solely focused on issuing disciplinary actions.

(7) The applicant has continuously made efforts to improve her situation, including attending college full-time, completing military courses, and seeking help from EO. However, she believes she has been denied the opportunity to demonstrate her abilities in a fair and supportive environment. She requests the chance to be reassigned to a new section under a different chain of command, where she believes she can prove her value as a soldier without facing harassment or inappropriate behavior from her NCOs. She concludes by expressing her desire to continue her military career and hopes for a fresh start under a more supportive command.

i. The immediate commander-initiated separation action against the applicant for unsatisfactory performance. He recommended that her period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

j. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 13, paragraph 13-1, for unsatisfactory performance. The applicant's appeal was denied, and further counseling and rehabilitation was waived. She would be issued a general, under honorable conditions discharge.

k. On 25 August 1995, she was discharged from active duty with a general, under honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 2 years, 9 months, and

14 days of active service. The narrative reason for separation is listed as "Unsatisfactory Performance."

5. On 10 June 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding Physical Assault/MST and no records were found.

6. By regulation (AR 635-200), action will be taken to separate members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

9. MEDICAL REVIEW: The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a discharge upgrade from General, Under Honorable Conditions to Honorable. She contends that Other Mental Health and Reprisal/Whistleblower status are related to her request. She also stated that she was verbally and physically harassed by her superiors which she contends impacted her performance.

a. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army Reserve 31Aug1992 and then into the Regular Army 12Nov1992. Her MOS was 71G Patient Administration Specialist. The record did not show foreign service. She was released from active duty on 25Aug1995 under provisions of AR 635-200 chapter 13 due to unsatisfactory performance. Her service was characterized as General, Under Honorable Conditions.

b. The record contained the following counselings/offenses: Wrongfully endeavored to influence the action of SGT [REDACTED] by offering him \$100 for him to forget an incident (02Mar1994); Missed Legal Assistance appointment (09Nov1994); Reported to work 7 hours late (11Feb1995); Failed to go to prescribed place of duty on time (13Feb1995 and 05Apr1995); Drove a vehicle under a Learners permit without supervision; (22Feb1995); Usage of areas outside of Chain of Command (07Mar1995); Failed to

follow orders to call when she arrived at JAG appointment and to call when she left (27Mar1995); Disobeyed a lawful order and circumventing the chain of command (09May1995); and Disrespect toward a superior officer, willfully disobeyed a superior officer, and insubordinate conduct towards an NCO (16May1995). A memorandum of record dated 11May1995 indicated that the applicant failed to report on four occasions: 10Apr1995, 02May1995, 05May1995 and 08May1995. It should be noted that the 10Apr1995 absence was disputed. She was counseled about specific areas of her job performance on dates 09Feb1995, 12Mar1995. There had been a prior 19Nov1993 promotion deferment for the following reasons: Job performance deficiencies 23Oct1993, 24Oct1993 and 28Oct1993; Disrespect to an NCO (26Oct1993); Failure to report to barrack meeting (29Oct1993); and Failure to repair (05Nov1993). And finally, the record contained a 23Sep1993 General Counseling for as a single parent, having her child there against her enlistment qualification.

c. Concerning the Reprisal/Whistleblower contention; the applicant reported the following: She stated that a SGT physically assaulted her (pinched her arm and twisted her skin). She reported this and the situation caused her to have “mental breakdown”. In addition, she was given permission to move into housing with her daughter offsite for 6 months. Then she received notice that this was no longer possible due to her enlistment contract, and as a result she had to make arrangements to send her daughter to live with her mother. She went to JAG to see what her rights were, and she stated that command did not like this. She said she received notice of promotion deferment (dated 20Jan1995) due to performance issues. She implied that this was unjust because she had not received any negative counseling statements. She questioned command about this and states that the following day she received multiple negative counselings.

d. Concerning the applicant’s report of Other Mental Health condition and “mental breakdown” there were no service treatment records available for review. Treatment records for the applicant located in JLV system, started in 2005 (about a decade after her discharge). Review of the available electronic medical records did not show a mental health diagnosis. In the 07Jun1995 Report of Medical History (for chapter separation), the applicant did not endorse any mental health symptoms. A Report of Mental Status Evaluation was not completed. In her 10Jul1995 rebuttal to the notification of the recommendation to involuntary separate her, the applicant did not indicate that she had a mental health diagnosis or that she was experiencing any mental health symptoms while in service. She stated that her chain of command made her see a community mental health counselor against her will. The community evaluation was not found in the record.

e. Concerning the Reprisal/Whistleblower condition, the undersigned did not find any relevant evidence in available medical records.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. As per Liberal Consideration, the applicant's self-assertion of a mental health condition is sufficient for consideration for a discharge upgrade.

(2) Did the condition exist, or did the experience occur during military service? Yes. As per Liberal Consideration, the applicant's self-assertion of a mental health condition, is sufficient to affirm its existence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service BH records. Beyond self-report, there was no evidence that the applicant was experiencing a mental health condition while in active service. Therefore, there was insufficient medical evidence to support a nexus between a mental health condition, and her chapter 13 separation. That notwithstanding, the applicant contends that an Other Mental Health condition and Reprisal contributed to her discharge, and under Liberal Consideration, the applicant's contentions alone are sufficient for the Board's consideration for the discharge upgrade.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, the military record, her length of service, the frequency and nature of her misconduct, the record of counseling and the reason for her separation. The Board considered published Department of Defense guidance for liberal consideration and clemency determinations when reviewing discharge upgrade requests. The Board considered her statements regarding being assaulted and suffering reprisal as a Whistleblower. The Board considered the review of the medical advising official to include the four Kurta questions, the absence of evidence of in-service BH records and the conclusion that her contentions are sufficient to consider a discharge upgrade. The Board concurred with the conclusion that there was insufficient medical or other evidence to support a nexus between a mental health condition, and her chapter 13 separation even in light of her statement. Based on a preponderance of evidence the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

4/28/2025

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.

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 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty



service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

d. Chapter 13 of the regulation in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. In pertinent part, it provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

4. By Army Regulation 635-212, then in effect, set forth the policy and procedures for separation of enlisted personnel for unfitness. Paragraph 6a provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana, (4) an established pattern for shirking; (5) an established pattern showing dishonorable failure to pay just debts. and (6) and establish pattern showing dishonorable failure to contribute accurate support to dependents or failure to comply with orders, decrees comma or judgments of a civil court concerning support of dependents.

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 post-traumatic stress disorder (PTSD)

criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. 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 DRBs and BCM/NRs 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. Boards are to consider 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.

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.

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 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.

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.

8. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//