

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20240001567

APPLICANT REQUESTS: in effect, and upgrade of her under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 19 December 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 19 December 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 11 March 1988
- Department of Veterans Affairs (VA) Administrative Decision, 23 November 1992
- eight-character references

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 defers to the Department of Veterans Affairs (VA) decision. On her DD Form 149, she annotates other mental health is related to this request.
3. The applicant enlisted in the Regular Army on 19 December 1980. She subsequently reenlisted on 16 August 1983, for an additional period of 4 years. She was awarded the military occupational specialties of 94B (Food Service Specialist) and 73C (Finance Specialist). The highest rank she attained was specialist four/E-4.
4. A letter from the Deputy Division Chaplain to the applicant's Commander, shows on 4 October 1985 the applicant was interviewed concerning her desire to be separated from the service for humanitarian reasons. The applicant stated she was a single parent on assignment to Korea and an overseas assignment would cause her hardship. The Chaplain stated the applicant should be considered for a compassionate reassignment

or recommended approval of her request for termination of service under honorable conditions.

5. A DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from emergency leave to absent without leave (AWOL) effective 8 April 1986. Additionally stating the applicant was on emergency leave and had failed to report to the unit or contact the unit to extend her leave.

6. An additional DA Form 4187, shows her duty status changed from AWOL to dropped from rolls, as a deserter, effective 7 May 1986.

7. Court-martial charges were preferred against the applicant on 10 June 1986 for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with one specification of being AWOL on or about 8 April 1986 and remaining so absent.

8. The applicant's service record is void of the complete facts and circumstances surrounding her discharge processing. However, her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 11 March 1988, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service), for the good of the service – in lieu of court-martial, in the grade of E-1. Her service was characterized as under other than honorable conditions, with separation code of KFS and reenlistment code of RE-3. She completed 5 years, 9 months, and 5 days of net active service with time lost from 8 April 1985 to 15 August 1987 and 15 August 1987 to 24 January 1988. She was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Marksman Badge with Rifle Component Bar

9. The applicant additionally provides:

a. An VA administrative decision, which shows the facts of the applicant's discharge. It was determined that the unauthorized absence by the applicant was due to her parental obligation to care for her child, as it appeared that the child's welfare was in jeopardy. This constituted a compelling circumstance to warrant a prolonged absence of AWOL. The VA concluded the period of service from 19 August 1980 to 18 August 1983 and 19 August 1983 to 11 March 1988 were determined to have been served under honorable conditions and therefore were not a bar to VA benefits.

b. Five-character references for the Board's review in full. The applicant's family members, her daughter, aunt, nephew, and her sisters summarize the applicant as dependable, dedicated to helping family, friends, and her community, a stable and caring individual, a woman who has self-preserved. Although she endured hardships in her life, she continues a positive course and helps with others battling or struggling with alcohol or substance abuse. She is a woman who takes action and works hard to be an example that others can be proud of. The applicant is an asset to her family, and they request the Board consider upgrading her discharge as she is worthy and understands her mistake of going AWOL.

c. Three-character references wherein the applicant's friends and coworker summarize her as a caretaker to her nephew who raised him to become a polite and happy young man. She displays a high degree of integrity, responsibility, and ambition, as well as she is dependable, intelligent, a hard worker who never loses sight of her goals, and who can be trusted and counted on.

10. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her characterization of service. On her DD Form 149, she indicated Other Mental Health Issues are related to her request and also marked administrative and disability regarding the category of request. 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: 1) the applicant enlisted in the Regular Army (RA) on 19 December 1980 and reenlisted on 16 August 1983, 2) a letter from the Deputy Division Chaplain dated 04 October 1985 shows the applicant was interviewed regarding her desire to be separated from the service for humanitarian reasons. More specifically, it was noted that she was a single parent on assignment to Korea and asserted that an overseas assignment would cause her hardship, The Chaplain recommended consideration of a compassionate reassignment or approval of her request to terminate her service under honorable conditions, 3) court-martial charges were preferred against the applicant on 10 June 1986 due to being absent without leave on or about 08 April 1986 and remaining absent, 4) the applicant's service record is void of the complete facts and circumstances regarding her discharge processing. Her DD Form 214 shows that she

was discharged on 11 March 1988 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service-in lieu of court-martial. Her service was characterized as under other than honorable with a separation code of KFS and reenlistment code of RE-3, 5) a VA administrative decision shows the facts of the applicant's discharge. It was determined that her unauthorized absence was due to her parental obligation to care for her child and that her child's welfare was in jeopardy. The VA concluded the period of service from 19 August 1980 to 18 August 1983 and 19 August 1983 to 11 March 1988 were determined to have been served under honorable conditions and therefore were not a bar to VA benefits.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. In-service records available via the Veterans Benefits Management System (VBMS) were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service records available via VBMS were reviewed. The applicant's Report of Medical Examination for the purposes of enlistment and re-enlistment indicate there were no psychiatric concerns at the time of those examinations. There were no other in-service medical records available for review.

d. Review of JLV shows the applicant is 80% service-connected through the VA, 50% for Major Depressive Disorder. The applicant underwent four BH Compensation and Pension (C&P) examinations dated 19-20 March 1996, 27 July 2020, 28 November 2023, and 08 July 2024. At the time of the initial C&P examination in 1996, the applicant described an abusive relationship while in-service from April 1981 to April 1983 with another service member, who was the father of her child, which included unwanted sexual contact. She further asserted that she believed her abusive relationship led to the premature birth of her son and need for a hysterectomy. At the time of the evaluation she was diagnosed with Chronic Cocaine Dependence (in sustained full remission), Chronic Alcohol Dependence (in sustained full remission), and Depression, not otherwise specified, by history. At the time of the evaluation on 27 July 2020, she was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic. The evaluation completed on 28 November 2023 documented the applicant was diagnosed with Major Depressive Disorder, Recurrent, Mild. It was noted that the applicant's diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood was changed and documented to be a progression of the previous diagnosis. The provider indicated that MDD, Recurrent was diagnosed at the VA and was likely a progression diagnosis. At the time of her C&P examination dated 08 July 2024, the applicant was diagnosed with MDD with Anxious Distress and the evaluator noted that the applicant's diagnosis of MDD had progressed to include with anxious distress.

Regarding her treatment history through the VA, the applicant initiated BH services through the VA on 26 January 1996. It was documented that she had a history of cocaine abuse, noted to have a 5-year period of abstinence while on active duty, and her last use was 1994. She was diagnosed with Alcohol and Cocaine Dependence, In Clinical Remission with a plan to admit to the Addictive Disorders Treatment Program (ADTP). During an intake on 28 December 1999, it was documented the applicant had been sober for 5 years and was diagnosed with Dysthymia with a rule out of secondary to brain damage and polysubstance abuse in remission. She was started on Citalopram (antidepressant). The applicant was referred for mental health treatment on 21 February 2019 due to depression, nightmares, and sleep problems and was referred to the Primary Care Mental Health Integration (PCMHI) for follow-up treatment. On 17 July 2019, she was diagnosed with Major Depressive Disorder (MDD) with a rule out of Posttraumatic Stress Disorder (PTSD). A note dated 03 October 2019 documented the applicant reported a history of Military Sexual Trauma (MST). Review of JLV shows the applicant has continued individual psychotherapy for treatment of MDD through present day and on 26 March 2024 her treating provider added PTSD to her clinical diagnoses. The applicant also attended group therapy from 26 March 2020 through 14 September 2021.

e. The applicant is applying to the ABCMR requesting an upgrade of her characterization of service. On her DD Form 149 she indicated Other Mental Health Issues are related to her request and also marked administrative and disability as the category of request. The applicant's in-service records were void of any in-service BH diagnoses or treatment history. Available VA records show that the applicant is 50% service-connected for Major Depressive Disorder and also documented a history of MST. She has received ongoing BH treatment through the VA since 2019.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 50% service-connected through the VA for Major Depressive Disorder. VA records also document a history of MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 50% service-connected through the VA for Major Depressive Disorder. VA records also document a history of MST. Service-connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there is no evidence of any in-service BH diagnosis or treatment history, since her discharge from the military, the applicant has been diagnosed and 50% service-connected for Major Depressive Disorder through the VA. Additionally, review of the VA records indicates the applicant reported a history of MST during a C&P examination as

well as during the course of BH treatment to her VA treating provider. Per Liberal Guidance, the applicant's assertion alone is sufficient to establish that she was a victim of MST. As there is an association between MST, depressive symptoms, and avoidance behavior, there is a nexus between the applicant's experience of MST, diagnosis of MDD and misconduct of going AWOL. As such, BH mitigation is supported.

g. Regarding disability, there is no evidence that the applicant met criteria for a BH condition in-service that fell below retention standards IAW AR 40-501. As such, a referral to IDES is not warranted.

#### BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant's separation packet is not available for review. However, other evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, she presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's available separation processing.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is sufficient evidence of a behavioral health condition that mitigates her misconduct. The Board also considered her length of service as well as the character reference letters that speak of her high degree of integrity, responsibility, and ambition, and determined that given her extensive AWOL (8 April 1985 to 15 August 1987 and 15 August 1987 to 24 January 1988), her service clearly did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, 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 amending the DD Form 214 for the period of service ending 11 March 1988 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S): a review of the applicant's record shows her DD Form 214, for the period ending 11 March 1988, is missing important entries that affect her eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in Item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19800819 UNTIL 19830815

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. Section 1556 of Title 10, U.S. 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.

3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, 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, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions 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.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated



service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

4. 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 Post-Traumatic Stress Disorder; 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.

5. 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//