

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240001633

APPLICANT REQUESTS: her uncharacterized service be changed to honorable and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 2 March 1990
- License and Certificate of Marriage, State of South Carolina, dated 21 September 2020
- Statements of support (4), dated 28 November 2023 to 1 December 2023

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:

a. Her first duty station was in Germany. She was 18 years old with an 8-month old baby. She did not realize how difficult it would be. She tried to acclimate, but she was homesick and missed her son. She had no close friends and would go to the pub after work. While at the pub one evening, someone pulled her and put a hand over her mouth. She does not know who attacked her, but she woke up in an alley after being sexually assaulted. She went back to the barracks and did not tell anyone. She became depressed, was unable to perform her duties, and had thoughts of suicide. She was placed in a mental hospital for five days. Her discharge for "failure to adapt" was initiated. It was not that at all. She was able to adapt, but she was sexually assaulted.

b. After her discharge, she excelled at several things. She obtained an associate degree in paralegal, received a Bachelor of Science in Criminal Justice, and started her

master's program in Criminal Justice Public Administration. She has been employed at the County Clerk of Courts office for 23 years. She is a dedicated, honest, kind, passionate person, who goes above and beyond. She would have made a great Soldier had that incident not occurred. The applicant notes post-traumatic stress disorder (PTSD) and sexual assault/harassment as conditions related to her request.

3. The applicant enlisted in the Regular Army on 23 August 1989, for 4 years. Upon completion of initial entry training, she was awarded military occupational specialty 76Y (Unit Supply Specialist). Her first duty station was in the Federal Republic of Germany, where she served from 10 January 1990 to 1 March 1990. The highest rank she attained was private/E-1.

4. The applicant underwent a mental status evaluation on 16 January 1990. The evaluating psychiatrist noted a diagnostic impression of personality disorder, mixed with dependent, passive aggressive, narcissistic, and histrionic features, severe, which interfered with her ability to perform duty and function effectively in the military. The physician recommended that she be discharged from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 5-13, by reason of personality disorder. She was psychiatrically cleared for any administrative action deemed appropriate by the command.

5. The applicant's immediate commander notified her of his intent to initiate action to separate her under the provisions of AR 635-200, paragraph 11-2, for failure to adapt to the military life. The commander cited the applicant's mental status evaluation in support of the action.

6. On that same date, the commander formally recommended the applicant's separation under the provisions of AR 635-200, Chapter 11, by reason of failure to adapt to the military environment.

7. The applicant acknowledged receipt of the proposed separation notification. She consulted military counsel and was advised of the basis for the contemplated action and its effects; of the rights available to her; and the effect of any action to waive her rights. In a self-authored statement, dated 26 January 1990, the applicant stated she wanted to be "chaptered out" of the Army. She was depressed constantly and desperately wanted to be with her son. She was not able to adapt to military life. She saw a psychiatrist, and he felt the same.

8. A Statement of Option, dated 1 March 1990, shows the applicant elected not to undergo a separation medical examination.

9. A legal review of the administrative separation action determined the recommended separation was legally sufficient.

10. The separation authority approved the recommended separation action and directed the issuance of an Honorable Discharge.

11. The applicant was discharged on 2 March 1990, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status. Her DD Form 214 shows her service was uncharacterized, with separation code JGA and reentry code RE-3. She completed 6 months and 10 days of net active service.

12. The applicant provides:

a. A copy of her marriage license and certificate, dated 21 September 2020, which shows her husband's last name as Mxxxxx.

b. In four statements of support, dated 28 November 2023 to 1 December 2023, the authors attest to the applicant's strong work ethic and professionalism. She is a kind, compassionate person, who is passionate about helping others. She has proven herself to be a loyal and dedicated individual in both her personal and professional life.

13. On 12 September 2024, in the processing of this case, the U.S. Army Criminal Investigation Division (CID), searched their criminal file indexes, which revealed no CID and/or Military Police sexual assault records pertaining to the applicant.

14. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

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

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her uncharacterized service to honorable. 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 23 August 1989.
- Applicant underwent a mental status evaluation on 16 January 1990. The evaluating psychiatrist noted a diagnostic impression of personality disorder, mixed with dependent, passive aggressive, narcissistic, and histrionic features,

severe, which interfered with her ability to perform duty and function effectively in the military. The physician recommended that she be discharged from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 5-13, by reason of personality disorder. She was psychiatrically cleared for any administrative action deemed appropriate by the command.

- Applicant's immediate commander notified her of his intent to initiate action to separate her under the provisions of AR 635-200, paragraph 11-2, for failure to adapt to the military life. The commander cited the applicant's mental status evaluation in support of the action.
- Applicant acknowledged receipt of the proposed separation notification. She consulted military counsel and was advised of the basis for the contemplated action and its effects; of the rights available to her; and the effect of any action to waive her rights. In a self-authored statement, dated 26 January 1990, the applicant stated she wanted to be "chaptered out" of the Army. She was depressed constantly and desperately wanted to be with her son. She was not able to adapt to military life. She saw a psychiatrist, and he felt the same.
- Applicant was discharged on 2 March 1990, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level status. Her DD Form 214 shows her service was uncharacterized, with separation code JGA and reentry code RE-3. She completed 6 months and 10 days of net active service.

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, "her first duty station was in Germany. She was 18 years old with an 8-month-old baby. She did not realize how difficult it would be. She tried to acclimate, but she was homesick and missed her son. She had no close friends and would go to the pub after work. While at the pub one evening, someone pulled her and put a hand over her mouth. She does not know who attacked her, but she woke up in an alley after being sexually assaulted. She went back to the barracks and did not tell anyone. She became depressed, was unable to perform her duties, and had thoughts of suicide. She was placed in a mental hospital for five days. Her discharge for "failure to adapt" was initiated. It was not that at all. She was able to adapt, but she was sexually assaulted. After her discharge, she excelled at several things. She obtained an associate degree in paralegal, received a Bachelor of Science in Criminal Justice, and started her master's program in Criminal Justice Public Administration. She has been employed at the County Clerk of Courts office for 23 years. She is a dedicated, honest, kind, passionate person, who goes above and beyond. She would have made a great Soldier had that incident not occurred."

d. Due to the period of service no active-duty electronic medical records were available for review. However, she submits a mental status evaluation dated 16 January 1990. The evaluation notes the applicant's depression, but the diagnostic impression

was of a personality disorder. The physician recommended discharge from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 5-13, by reason of personality disorder. She was psychiatrically cleared for any administrative action deemed appropriate by the command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of her discharge. On her application, she indicates being treated by a counselor for issues related to her experience of MST, however no medical documentation was submitted for review.

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 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 checked PTSD on her application.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to failure to adapt to military life, 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.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 evidence shows the applicant commander initiated separation action against the applicant for failure to adapt to the military life. Although she completed training, her

separation was initiated within the first 180 days of her active service. As a result, she received an uncharacterized discharge. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service or when separation is initiated within the first 180 days. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise. The Board found no error or injustice.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and while the Board noted the medical reviewer's determination that there is sufficient evidence to support the applicant had an experience of MST that mitigates her discharge, the Board did not agree with such finding for various reasons:

(1) The applicant underwent a mental status evaluation on 16 January 1990. The evaluating psychiatrist noted a diagnostic impression of personality disorder, mixed with dependent, passive aggressive, narcissistic, and histrionic features, severe, which interfered with her ability to perform duty and function effectively in the military. She was psychiatrically cleared for any administrative action deemed appropriate by the command. MST is not mentioned anywhere during the psychological evaluation.

(2) The U.S. Army Criminal Investigation Division (CID), searched their criminal file indexes, which revealed no CID and/or Military Police sexual assault records pertaining to the applicant.

(3) During her separation processing, she clearly indicated she wanted to be "chaptered out" of the Army. She was depressed constantly and stated she desperately wanted to be with her son.

Based on a preponderance of available 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.

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 ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

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

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

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or

failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

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 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief 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. 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//