

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240002050

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions (UOTHC) characterization of service and correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty), Item 26 (Separation Code) to show a different Separation Program Designator (SPD) Code, presumably more favorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Army Service Records (50 pages), dated 6 December 2005 to 26 July 2006
- Service Treatment Records (43 pages), dated 11 January 2006 to 24 April 2006
- Statement of support, dated 11 October 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, her commander noted that “there does not appear to be any reasonable ground to believe that the individual is, or was, at the time of her misconduct, mentally defective, deranged or abnormal.” However, she was diagnosed with borderline personality disorder. Prior to her going absent without leave (AWOL), the doctor strongly recommended she be considered for separation due to personality disorder. The applicant notes other mental health as a condition related to her request.
3. The applicant enlisted in the Regular Army on 10 January 2006 for a 4-year period.
4. The applicant was reported AWOL on 24 April 2006 and subsequently dropped from the rolls on 24 May 2006. She surrendered to military authorities at Fort Knox, KY, on 20 June 2006 and was reported present for duty on that same date.

5. Court-martial charges were preferred against the applicant, on 22 June 2006, for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL from on or about 24 April 2006 until on or about 20 June 2006.

6. The applicant consulted with legal counsel on 22 June 2006.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting a discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion. She further acknowledged understanding that if her discharge request were approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Department of Veterans Affairs, and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised she could submit any statements she desired in her own behalf. She elected not to submit a statement.

7. On 10 July 2006, the applicant's immediate commander recommended approval of her request for discharge, further recommending a UOTHC discharge. As part of his recommendation, the commander noted, "There does not appear to be any reasonable ground to believe that the individual is, or was, at the time of her misconduct, mentally defective, deranged or abnormal."

8. On 12 July 2006, the separation authority approved the requested discharge in lieu of trial by court-martial and directed a UOTHC characterization of service.

9. The applicant was discharged on 26 July 2006 under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 confirms her character of service was UOTHC, with SPD code KFS and reentry code RE-4. She was credited with 4 months and 21 days of net active service, with lost time from 24 April 2006 to 19 June 2006. She was not awarded a military occupational specialty.

10. The applicant provides the following:

a. 50 pages of service records, dated 6 December 2005 to 26 July 2006, are summarized, in pertinent part, in the Record of Proceedings (ROP) above.

b. 43 pages of service treatment records, dated 11 January 2006 to 24 April 2006, show that between 3 April 2006 and 21 April 2006, the applicant was seen at the Fort Leonard Wood Army Community Hospital Mental Health Clinic on six occasions. She was diagnosed with Adjustment Disorder with Depressed Mood and Anxiety Disorder, not otherwise specified. On 24 April 2006, she was seen in the Psychiatry Clinic and diagnosed with Borderline Personality Disorder. At which time, the evaluating provider strongly recommended the applicant be separated under the auspices of AR 635-200, paragraph 5-13, due to borderline personality disorder.

c. In a statement of support, dated 11 October 2023, a clinical counselor who has been seeing the applicant for her mental health concerns states, the applicant was diagnosed with Major Depressive Disorder with anxious distress that would be consistent with the natural progression of the postpartum depression she experienced before joining the military. It is as likely as it is not that experiences in the military grossly aggravated the symptoms of depression beyond the typical progression, creating an exaggerated response which would not have occurred without the extenuating circumstances.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, "KFS" is the appropriate separation code.

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

14. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service and correction of her DD Form 214 to show a more favorable Separation Program Designator (SPC) Code.

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:

- Applicant enlisted in the Regular Army on 10 January 2006.

- Applicant was reported AWOL on 24 April 2006 and subsequently dropped from the rolls on 24 May 2006. She surrendered to military authorities at Fort Knox, KY, on 20 June 2006 and was reported present for duty on that same date.
- Court-martial charges were preferred against the applicant, on 22 June 2006, for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 24 April 2006 until on or about 20 June 2006.
- Applicant consulted with legal counsel on 22 June 2006. After receiving legal counsel, she voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10.
- Applicant was discharged on 26 July 2006, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 confirms her character of service was UOTHC, with separation code KFS and reentry code RE-4. She was credited with 4 months and 21 days of net active service, with lost time from 24 April 2006 to 19 June 2006. She was not awarded a military occupational specialty.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states her commander noted that "there does not appear to be any reasonable ground to believe that the individual is, or was, at the time of her misconduct, mentally defective, deranged or abnormal." However, she was diagnosed with borderline personality disorder. Prior to her going absent without leave (AWOL), the doctor strongly recommended she be considered for separation due to personality disorder. The applicant notes other mental health as a condition related to her request.

d. Active-duty electronic medical records available for review indicate the applicant initiated mental health services on 3 April 2006, when she reported anger and frustration due to stress fractures on her feet that prevented her from training. She was diagnosed with Adjustment Disorder with Depressed Mood. During that encounter, the applicant shared having been diagnosed with depression as a teenager and treated unsuccessfully with medication by her family doctor prior to military service. The applicant was seen on 5 April 2006, due to worsening symptoms and the applicant reporting, "I can't stay here." She was diagnosed with Anxiety Disorder. The applicant was seen once again on 7 April 2006, and reported a history of postpartum depression, prior to military service. The applicant reported experiencing intense guilt over leaving her baby along with significant psychiatric symptoms. The clinician notes contacting her command to inform of concerns regarding worsening depression, intrusive thoughts, and possible suicidal ideation. A note dated 11 April 2006, states discharge paperwork had been submitted by the chaplain to her LTC and the applicant was anxious about the outcome. On 18 April 2006, the applicant met with her clinician and indicated worsening psychiatric symptoms, medication was recommended. However, she was reluctant to

consider psychotropic medication since her prior history with medication did not improve her symptoms. The note indicates the clinician contacted the applicant's LTC and explained her psychiatric history and recommended discharge. On 21 April 2006, the applicant was seen in the emergency room due to worsening symptoms of anxiety and depression, along with "mood congruent psychosis". This episode was triggered by her command having rejected the recommendation for the applicant's discharge. On 24 April 2006, the chief of behavioral medicine sent an evaluation to command strongly recommending separation under the auspices of AR 635-200 chapter 5-13. The evaluation diagnosed the applicant with Borderline Personality Disorder and notes her recurrent suicidal thoughts, history of self-mutilation, marked mood swings, chronic feelings of emptiness, marked problems with irritability and anger management, and transient stress related dissociative episodes/anxiety related psychosis (such as hearing the voice of her baby screaming). The evaluation states, "if retained it is a near certainty that she will eventually have suicidal gestures or attempts. Her emotional dyscontrol is not going to diminish over time and will probably just intensify as she becomes more and more desperate to be reunited with her child." The applicant went AWOL on this date.

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. However, the applicant is engaged in behavioral health services via the VA's Veteran's Treatment Court and the record shows she is diagnosed with Mood Disorder, Generalized Anxiety Disorder, and Cannabis Use Disorder.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health condition, during military service, 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 a mitigating condition, OMH.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder with Depressed Mood, Anxiety Disorder, Borderline Personality Disorder and experienced a psychotic episode while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged for one specification of being AWOL. The medical record indicates the applicant was experiencing significant psychiatric distress during military service and all mental health providers who assessed her recommended discharge from

military service. Given the nexus between anxiety and avoidance, her misconduct of AWOL would be mitigated by her BH conditions at the time of service.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct, and the reason for her separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

2. A majority of the Board concurred with the conclusion of the medical advising official regarding the applicant's misconduct being mitigated by her behavioral health conditions. A majority of the Board further noted that the applicant was in an entry-level status when her discharge processing commenced. Based on a preponderance of the evidence, a majority of the Board determined the applicant's record should be corrected to show her service was uncharacterized with no change to the SPD code related to her discharge in lieu of trial by court-martial.

3. The member in the minority noted the applicant's brief period of service in a trainee status and determined the character of service she received upon discharge and the SPD code associated with the reason for her discharge are not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 reissuing her DD Form 214 to show her service was uncharacterized.

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 any relief in excess of that described above.

■ [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 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "KFS" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial.

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

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that a 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 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 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//