

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240002083

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions (UOTHC) character of service to honorable
- correction of her rank/pay grade to private first class/E-3
- a change to her narrative reason for separation
- credit for lost time and pay for that period
- 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 March 2001
- Emergency Care and Treatment Record, dated 18 January 2000
- Referral for Civilian Medical Care, dated 25 February 2000

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 in February 2000, she was sexually assaulted by a drill sergeant during advanced individual training (AIT) at Fort Lee, VA, which is shown on her medical records. She suffers from mental trauma, headaches, and insomnia to this day. The applicant notes post-traumatic stress disorder (PTSD), sexual assault/harassment, and reprisal/whistleblower as issues related to her request.
3. The applicant enlisted in the Regular Army on 17 November 1999. She completed basic combat training at Fort Leonard Wood, MO, and reported to AIT at Fort Belvoir, VA, on 11 February 2000. The highest rank she attained was private/E-1.

4. The applicant was reported as absent without leave (AWOL) on 28 February 2000 and was subsequently dropped from the rolls on 29 March 2000.
5. She surrendered to military authorities at Fort Worth, TX, on 5 September 2000. She was returned to military control and transferred to Fort Sill, OK, on that same date.
6. Court-martial charges were preferred against the applicant on 6 September 2000, 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 28 February 2000 until on or about 5 September 2000.
7. The applicant consulted with legal counsel on 13 September 2000.
 - 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 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by courts-martial. In her request for discharge, she acknowledged understanding that by requesting 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 statements in her own behalf. She elected not to submit a statement.
8. The applicant's immediate commander recommended approval of the request for discharge and further recommended a UOTHC discharge. The commander stated the applicant went AWOL for personal reasons and had become disillusioned with the military.
9. The separation authority approved the request for discharge and directed the issuance of an UOTHC discharge.

10. The applicant was discharged on 19 March 2001, in the rank/grade of private/E-1, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 shows her character of service was UOTHC, with separation code KFS and reentry code RE-4. She completed 9 months and 22 days of net active service, with lost time from 28 February 2000 to 5 September 2000. She was not awarded a military occupational specialty.

11. The applicant provides two medical documents from her service treatment record, dated 18 January 2000 and 25 February 2000 which will be summarized in the "Medical Review" section of this Record of Proceedings (ROP).

12. In the processing of this case, the Army Review Boards Agency (ARBA) requested copies of redacted Criminal Investigation Division (CID) reports, Military Police reports, and unredacted Inspector General (IG) records pertaining to the applicant's contentions of sexual assault and whistleblower status. A search of the Army criminal files indexes revealed no records pertaining to the applicant. Nor were any records obtained from IG.

13. 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 UOTHC character of service is normally considered appropriate.

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

15. 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.

16. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

1. 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 had several requests which included but was not limited to discharge upgrade from Under Other Than Honorable Conditions to Honorable, and a

change in narrative reason for discharge. Her requests were related to PTSD, Sexual Assault/Harassment conditions and Reprisal/Whistleblower status.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the Regular Army 17Nov1999. She was discharged 19Mar2001 under provisions of AR 635-200 chapter 10 in lieu of trial by court-martial. The charge sheet indicated that she was absent without authority from 28Feb2000 until 05Sep2000. Her service was characterized as Under Other Than Honorable Conditions.

3. The 25Feb2000 Social Work Services (Ft Lee, VA) consultation note described that the applicant appeared depressed and had difficulty sleeping at night due to a sexual assault. She also had pain with urination which required treatment with pain medication. The diagnosis was Sexual Assault. The date that she went AWOL was 3 days after the social services evaluation of the sexual assault. The military record showed that she deferred a physical examination at the time of separation.

4. JLV search showed the applicant has not been service connected by the VA likely due to the characterization of her discharge. The 01Dec2023 Mental Health Note revealed details surrounding the sexual assault and the impact it has had on her life. She was a virgin at the time of the assault (which appears to be corroborated by the 18Jan2000 emergency room note). She reported that she felt no compassion or mercy as well as a feeling a lack of respect from personnel toward her at the hospital where she was assessed afterward. Current symptoms included nervousness around men, restlessness, feeling numb, and daily dreams about the assault. She was diagnosed with PTSD secondary to MST. She was also given related diagnoses Major Depressive Disorder, Recurrent, Severe without Psychotic Features and Unspecified Sleep Disorder. She did engage in therapy.

5. Liberal Consideration guidance was considered. Military sexual trauma (MST) was documented in the applicant's contemporaneous military record. Under Liberal Consideration, MST is mitigating for the AWOL offence which led to her chapter separation from service.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant has been diagnosed with PTSD secondary to MST.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant experienced MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant endorsed multiple BH symptoms during the evaluation for her MST in

February 2000. In addition to symptoms noted above, her BH condition can be associated with issues of not feeling safe and wanting to isolate from others or avoid triggering negative related thoughts or situations. This can directly contribute to a decision to go AWOL. Under Liberal Consideration the applicant's BH condition is mitigating for her AWOL offense and warrants consideration for a discharge upgrade and change in narrative reason for discharge.

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. Discharge Upgrade: Deny. The evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, she 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. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official and did not agree with the medical reviewer's determination that there is sufficient evidence of a behavioral health condition that mitigates her misconduct.

(1) First, a search of the Army criminal files indexes revealed no records pertaining to the applicant. Nor were any records obtained from IG pertaining to the applicant's contentions of sexual assault and whistleblower status.

(2) Second, during discharge processing, the applicant did not mention any sexual assault. Her traumatic experience started before she joined the Army. The Consultation Sheet, dated 25 February 2000 show she joined the Army to escape her traumatic experience.

b. Narrative Reason for Separation and associated Codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of Chapter 10, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "In Lieu of

Court-Martial," the separation code is "KFS", and the RE Code is "RE 4." AR 635-5 and AR 635-8, Separation Documents, govern preparation of the DD Form 214 and dictate that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. Although the Board found mitigating factors that warrant upgrading her character of service, 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 these entries are proper and equitable and there is no reason to change them.

c. Grade: Deny. The Board found no evidence and the applicant provides none to show she qualified for promotion to PV2/E-3 or PFC/E-3. She entered active duty as private/E-1 on 17 November 1999 and she went AWOL some 3 months later on 28 February 2000. She did not qualify for promotion to PV2/E-2 or PFC/E-3.

d. Credit for lost time and pay for that period: Deny. The Board noted that by law and regulation, AWOL time is lost time and is not creditable for pay or service. Soldiers are not paid while they are Absent Without Leave (AWOL): AWOL is a non-pay status that applies when a service member is absent from duty without permission or approval.

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.

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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.

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 the ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, established policies and procedures for completion and distribution of the DD Form 214. The instructions stated for item 29 (Dates of Time Lost During this Period), were to enter the number of days lost and inclusive dates of time lost under Title 10, USC, Section 972, and any periods of non-chargeable time after expiration of term of service.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation identifies separation code KFS and narrative reason "in the lieu of trial by court-martial" for Soldiers voluntarily separated under the authority of Army Regulation 635-200.

6. 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. 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. 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. 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.

d. When a Soldier is to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

7. 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.

8. 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//