

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240002307

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her under other than honorable conditions (UOTHC) character of service to under honorable conditions (general), 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
- Army Service Records
- Medical Records
- Informational Articles (3)
- College Transcripts
- Certificates of Completion (13)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160012351 on 22 February 2019.
2. The applicant states she did not know how to cope with her anxiety and engaged in reckless behavior. She was a victim of peer pressure. Her mental state, health, and psychological well-being were not considered. She was vilified and treated like a pariah by her chain of command. She was never referred to treatment or given counseling. She notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to her request.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 12 August 2002, with service in Kuwait/Iraq from 6 January 2004 to 11 January 2005.
 - b. She was formally counseled on three occasions between 3 November and

9 December 2004 for malingering and missing formation.

- c. Before a summary court-martial, she was found guilty of wrongfully using marijuana, between on or about 8 September 2004 and 7 October 2004. She was sentenced to reduction to private/E-1, forfeiture of pay, and 45 days hard labor. The sentence was approved and ordered executed on 10 November 2004.
- d. She underwent a mental status evaluation on 18 November 2004. The evaluating provider diagnosed her with Adjustment Disorder with Depressed Mood and Substance Related Disorder (not otherwise specified). She was cleared for any administrative action deemed appropriate by command.
- e. On 21 January 2005, her commander notified her of her intent to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, by reason of commission of a serious offense.
- f. She was advised by consulting counsel of the basis for the contemplated action to separate her and its effects; of the rights available to her; and the effects of any action taken by her to waive her rights. In a statement in her own behalf, she requested to be discharged with a general character of service.
- g. On 24 January 2005, her commander formally recommended her separation, prior to her expiration term of service, with an UOTHC character of service. Subsequently, the separation authority referred the separation packet to an administrative separation board.
- h. She received nonjudicial punishment on 2 March 2005, for wrongfully using marijuana, between on or about 2 January 2005 and 31 January 2005.
- i. An administrative separation board convened on 3 March 2005. The board determined the applicant did commit a serious offense on five separate occasions and recommended she be separated from service with an UOTHC character of service.
- j. The separation authority approved the recommended separation and directed the issuance of an UOTHC Discharge Certificate.
- k. Accordingly, she was discharged on 17 March 2005, in the pay grade of E-1, with an UOTHC character of service. She completed 2 years, 7 months, and 6 days of net active service this period.
- l. The Army Discharge Review Board considered the applicant's request for an upgrade of her character of service on or about 29 December 2009 and 7 March 2011.

In both instances, after careful review, the Board determined she was properly and equitably discharged and denied her request for relief.

m. The ABCMR considered her request for an upgrade of her character of service on 22 February 2019. After careful review, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and denied her request for relief.

4. The applicant provides Army Service Records, Medical Records, certificates and transcripts showing post-service accomplishments, and several informational articles.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of her previous request for an upgrade of her under other than honorable conditions (UOTHC) character of service. She contends she was experiencing mental health conditions including PTSD which mitigate her misconduct. 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 on 12 August 2002; 2) The applicant deployed to Kuwait/Iraq from 6 January 2004-11 January 2005; 3) Before a summary court-martial, the applicant was found guilty of wrongfully using marijuana. She was sentenced to reduction to private/E-1, forfeiture of pay, and 45 days hard labor. The sentence was approved and ordered executed on 10 November 2004; 4) The applicant received non-judicial punishment on 2 March 2005, for wrongfully using marijuana; 5) An administrative separation board convened on 3 March 2005. The board determined the applicant did commit a serious offense on five separate occasions and recommended she be separated from service with an UOTHC character of service; 6) On 17 March 2005, the applicant was discharged, Chapter 14- commission of a serious offense. Her service was characterized UOTHC. She completed 2 years, 7 months, and 6 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) along with hardcopy military and civilian medical records provided by the applicant were also examined.

c. The applicant asserts she was experiencing mental health conditions including PTSD, which mitigate her misconduct. On 18 November 2004, the applicant underwent a mental status evaluation as part of her administrative separation proceedings. Her mood or affect was described as unremarkable and depressed, and she was diagnosed

with an Adjustment Disorder with Depressed mood. The applicant was determined to be mentally responsible and to have the mental capacity to understand and participate in the proceedings. In addition, she was cleared from a psychiatric perspective for any administrative action deemed appropriate by Command. There is insufficient evidence the applicant attended any additional behavioral health appointments during her active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, including PTSD by the VA, and she does not receive any service-connected disability for a mental health condition, including PTSD. The applicant provided various civilian medical records from 2007-2013 where she reported anxiety, depressive, suicidal, and PTSD symptoms. There was insufficient evidence provided on the history of her reported behavioral health symptoms and diagnoses and any potential relationship to her military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced mental health conditions including PTSD, which mitigate her misconduct. The applicant was diagnosed with an Adjustment Disorder with Depressed Mood during her active service. She also was diagnosed with PTSD and other mental health conditions after her discharge by civilian providers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions including PTSD, while on active service which mitigate his misconduct. The applicant was diagnosed with an Adjustment Disorder with Depressed Mood during her active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition including PTSD, while she was on active service. The applicant was diagnosed with an Adjustment Disorder after facing legal consequences for her misconduct, but there is insufficient evidence that she was experiencing a mitigating mental health condition prior to her misconduct. The applicant did repeatedly use illegal drugs, which could avoidant behavior and a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition, including PTSD during active service. Yet, the applicant contends she was experiencing a mental health

condition or an experience that mitigates her misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was charged with commission of a serious offense. The Board noted the applicant's post-service achievements and program completions to improve her life. Based on the applicant's continued clean record and recovery, the Board majority determined that relief was appropriate to amend her characterization of service to under honorable conditions (General). The Board minority was not convinced by the evidence that an upgrade from under other than honorable conditions was warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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: XX	: XX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	: XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 17 March 2005, to show in item 24 (Character of Service): under honorable conditions (General).

 //signed//

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 (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 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, and reviews to ABCMR applicants 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 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.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. 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.
 - b. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.
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. 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.

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.

//NOTHING FOLLOWS//