

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002390

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her uncharacterized service as honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Army Service Records (23 pages), dated 22 December 1993 to 7 March 1994
- Summary of Service, Dayspring Community Services, dated 10 August 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, in effect, she was singled out and physically and mentally abused by her drill sergeant. He forced food into her mouth, locked her in a closet for hours, and told her he would get her discharged. She suffers severe post-traumatic stress disorder (PTSD) and anxiety aggravated by her service experiences. She requires constant mental health therapy. She suffered a nervous breakdown in 1996, which required hospitalization. She notes PTSD, other mental health, and sexual assault/harassment as conditions related to her request.
3. Prior to the applicant's enlistment, she underwent a medical examination on 23 October 1993. She reported being in good health, with no current medication or significant medical history. The examining provider determined she was physically qualified for enlistment.
4. The applicant enlisted in the Regular Army on 2 February 1994, for a 5-year period. The highest rank she attained was private/E-1.
5. The applicant underwent a mental status evaluation on 11 February 1994.

a. She was referred by her chain of command as she was reportedly not adapting to military life, was homesick, depressed, and fearful. She self-reported an extensive history of mental health treatment, including lengthy hospitalizations for depression and substance abuse. She related a dysfunctional personal and family history involving physical, emotional, and sexual abuse. She was not motivated to be in the Army and was adamant that she be discharged.

b. The evaluating provider noted the following diagnoses: adjustment disorder with mixed emotional features; alcohol dependence; cannabis abuse; anxiolytic abuse; and borderline personality disorder (primary diagnosis). None of the diagnoses represented a mental disease or defect that warranted disposition through medical channels. The provider recommended the command immediately remove the applicant from training and initiate administrative separation under the applicable Army Regulations. The Soldier's enlistment was in contradiction to the physical standards required for enlistment.

6. The applicant was formally counseled on 12 February 1994 that a recommendation was being made to her chain of command that she receive an entry level separation from the Army due to her inability to adapt to military life.

7. Subsequently, the applicant was notified by her immediate commander of the commander's intent to initiate action to discharge her under the provisions of Army Regulation 635-200 (Personnel Separations), Chapter 7, fraudulent enlistment, concealment of medical defects. She had failed to disclose that she was alcohol dependent, abused cannabis and anxiolytic substance prior to entry on active duty.

8. The applicant acknowledged receipt of the notification. She was advised by counsel of the basis for the contemplated action to discharge her for fraudulent enlistment under the provisions of Army Regulation 635-200, Chapter 7-17, and its effect; of the rights available to her; and the effect of any action taken by her to waive her rights. She elected not to submit a statement in her own behalf.

9. The applicant's immediate commander recommended the applicant's separation from service, prior to her expiration term of service, for fraudulent enlistment. The commander noted the applicant failed to disclose that she was alcohol dependent and abused cannabis and anxiolytic substances prior to her entry on active duty. The intermediate commander also recommended approval.

10. On 2 March 1994, the separation authority approved the recommended separation action and further directed an entry level separation (uncharacterized).

11. The applicant was discharged on 7 March 1994, under the provisions of Army Regulation 635-200, Chapter 7, Section V, by reason of fraudulent entry. Her

DD Form 214 shows her service was uncharacterized, with separation code JDA and reentry code RE-3. She completed 1 month and 6 days of net active service. She was not awarded a military occupational specialty.

12. The applicant provides:

- Her Army Service Records (23 pages) which are summarized, in pertinent part, in the Record of Proceedings (ROP) above.
- A summary of service, dated 10 August 2023, from Dayspring Community Services shows the applicant has been in long term therapy with the therapist, on and off since 2009, for treatment of depression, anxiety, and trauma history provoking PTSD symptoms.

13. In the processing of this case, on or about 25 June 2024, the Criminal Investigation Division conducted a search of Army criminal file indexes which revealed no 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. The evidence of record shows the applicant was in an entry-level status at the time of her separation. 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. By regulation, fraudulent entry is the procurement of an enlistment, re-enlistment, or period of service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection.

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

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of her DD Form 214 to show her uncharacterized service as honorable. She contends mental health conditions including PTSD and sexual assault/harassment are related to her 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 Regular Army on 2 February 1994; 2) At her Command's request, the applicant underwent a mental status evaluation on 11 February 1994. She was recommended for administrative separation, and her enlistment was in contradiction to the physical standards required for enlistment; 3) The applicant was discharged on 7

March 1994, Chapter 7, Section V, by reason of fraudulent entry. Her service was uncharacterized. She completed 1 month and 6 days of net active service. She was not awarded a military occupational specialty.

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

c. The applicant asserts mental health conditions including PTSD and sexual assault/harassment are related to her request. The applicant reported experiencing harassment from a drill sergeant, but she did not report experiencing sexual harassment or trauma during her military service in her narrative description or in her medical documentation. There is evidence the applicant was experiencing significant difficulty adapting to the training environment shortly after starting. She was Command referred for a mental status exam less than two weeks after enlisting. She was reported to be "homesick, depressed, and fearful." Despite not reporting any history of behavioral health concerns during her initial medical evaluation, she relayed to the behavioral health provider, on 11 February 1994, an extensive history of behavioral health treatment, including lengthy hospitalizations for depression and substance abuse prior to her enlistment. She was reported to be currently depressed and anxious, and she was diagnosed primarily with Borderline Personality Disorder, Adjustment Disorder with mixed emotional features, alcohol dependence, and cannabis and anxiolytic abuse. None of these diagnoses represented a mental disease or defect that warranted disposition through medical channels, but she was recommended for an immediate administrative separation.

d. A review of JLV provided evidence the applicant began to engage with the VA in March 2024. She completed a Compensation and Pension Evaluation and was diagnosed with service-connected PTSD (100%SC). The applicant reported a long history of trauma and extensive mental health treatment for various psychiatric conditions prior to her enlistment. She described feeling harassed by her drill sergeant, but she did not report sexual trauma. The applicant reported being diagnosed with multiple mental health conditions including multiple personality disorders, and she is involved in behavioral health treatment currently at the VA. The applicant also provided civilian medical documentation from a behavioral health provider from Dayspring Community Services, dated 10 August 2023. She was reported to have been in long term therapy intermittently since 2009. She was treated for depression, anxiety, and PTSD symptoms. There was insufficient information provided on the history of these conditions or if they were related to her military service. 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 condition or experience that mitigates her discharge.

e. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she experienced mental health conditions including PTSD and harassment during her active service. She was diagnosed with a personality disorder, an adjustment disorder, and substance abuse/dependence conditions while on active service. She was also diagnosed with service-connected PTSD in 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she experienced mental health conditions including PTSD and harassment during her active service. She was diagnosed with a personality disorder, an adjustment disorder, and substance abuse/dependence conditions while on active service. She was also diagnosed with service-connected PTSD in 2024.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence beyond self-report the applicant was experiencing significantly difficulty adjusting to her training environment very shortly after arriving. She was diagnosed during her active service and by the VA with mental health conditions including service-connected PTSD. She also reported harassment from a drill sergeant. It is likely the applicant, having a long history of mental health concerns, trauma, and extensive behavioral health treatment prior to her enlistment, was an unsuitable candidate for the military. Thus, the training environment exasperated her mental health conditions. However, the applicant did not provide accurate information during her recruitment or initial medical evaluation to identify these concerns prior to her enlistment. Therefore, from a behavioral health perspective, there is insufficient evidence to support to correct her narrative reason for separation. However, the applicant contends she was experiencing a mental health condition or an experience that mitigates her discharge, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

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 applicant failed to disclose that she was alcohol dependent, abused cannabis and anxiolytic substance prior to entry on active duty. Accordingly, her chain of command initiated separation action against her for fraudulent enlistment. She was separated with 1 month and 6 days of active service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. The Board

found no error or injustice in her available separation processing. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service.

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. The Board agreed with the medical reviewer's finding insufficient to support the applicant had a condition or experience that mitigates her discharge. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of 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.

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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. Title 10, USC, Section 1556, 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 prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. Chapter 3 provides that 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.

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. Chapter 7 established policy and prescribed procedures for separating enlisted members for minority, erroneous enlistment, reenlistment or extension of enlistment, defective enlistment agreement, or fraudulent entry. Paragraph 7-17 provided that fraudulent entry is the procurement of an enlistment, re-enlistment, or period of service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. Upon determination that a fraudulent entry existed, the discharge authority would direct discharge and direct issuance of an honorable or general discharge certificate.

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. 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.

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//