

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002400

APPLICANT REQUESTS: a personal appearance before the Board via video/telephones. Also, her DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect:

- Item 24 (Character of Service): honorable vice under other than honorable (OTH) conditions
- Item 25 (Separation Authority): Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 5 vice AR 635-200, paragraph 14-12b
- Item 26 (Separation Code): JFF vice JKA
- Item 28 (Narrative Reason for Separation): Secretarial Authority vice Pattern of Misconduct

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel brief (15 pages)
- Exhibit A - Wilkie memo
- Exhibit B - Applicant declaration
- Exhibit C - Military record
- Exhibit D - Exhorter's License
- Exhibit E - Kurta Memo
- Exhibit F - Service Record
- Exhibit G - Character letter (Rev. R.R.M.)
- Exhibit H - Character letter (M.S.W.)
- Exhibit I - Character letter (K.D.)

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 she wants her discharge status to be upgraded to honorable or in the alternative, to general under honorable conditions, on justice and equity grounds under 10 U.S.C. § 1552(a)(1). She also requests that the narrative reason for separation be changed to Secretarial Authority with a corresponding change in the separation authority and separation code. Her separation was a direct response to continual sexual harassment from her first sergeant, who began harassing her shortly after joining his unit and continued through deployment in Iraq, including groping and unwanted advances. She attempted to address this harassment through her command but was ignored and belittled. Her actions were a result of her belief that the harassment would escalate into violence. She has been an exemplary member of her community since her separation and should be granted a discharge status upgrade on the grounds of equity and justice. She is eligible to submit a new application to upgrade her discharge status as part of the settlement in Kennedy v. McCarthy. The applicant also states in her (Exhibit B) 5-page declaration:

a. Her life as a child and how she was sexually assaulted and abused beginning when she was 8 years old. Family removed her from her stepfather to gain her mother's social security income. She was again sexually abused by an older family member and tormented until she enlisted in the Army after her 18th birthday. She thought she was free of the harassment and was ready to start her life free of all the abuse she had endured in her teenage years.

b. Shortly after being assigned to her duty station her first sergeant began to sexually harass her. The harassment went from stares to comments which escalated to unwanted physical contact. This behavior triggered her post-traumatic stress disorder (PTSD) from her childhood.

c. She decided to report him, as she did not want him to get away with this harassment. She was given the opportunity to speak with Criminal Investigation Division (CID), but she felt very uncomfortable and felt like she was not believed. Instead of opening an investigation, CID treated her as though she was the suspect. She was told to stay away from the first sergeant and stop smiling so much, as though she was the reason for the harassment or had the ability to avoid him.

d. She continued to serve in the 526th Brigade and continued to be harassed by the first sergeant. She did what she could do to avoid him, but he was still her superior and she still had to work with him. He knew that command did not believe her, so it made it easier for him to keep harassing her. The harassment was so bad that when she was granted leave in February 2005, she did not want to return to her unit. She told her aunt and her grandmother that she did not want to return to active duty due to the harassment by the first sergeant. After talking with them, she knew she had to return to

duty, though she was scared and reported for duty two days after her appointed return date.

e. In September 2005, her unit was deployed to Iraq. She was terrified of being deployed with the first sergeant. She felt like he had not faced any consequences at all from her report and had only been emboldened by the lack of discipline. He was still staring when he saw her, and she knew that he was going to try something once they were deployed. Her deployment was delayed because of medical issues, and she could not have been more comfortable knowing that she would leave at a later date than her first sergeant.

f. When she arrived in Iraq, her fears became reality. The first sergeant was more explicit in his desire to be with her. He got bold and would start grabbing her and not letting her go. He even kissed her on her lips when they were alone on duty. She told him she would report him again if he did not stop and he told her to go ahead and report him. She began always travelling with another soldier so that the first sergeant would never be able to get her alone.

g. After about a month of deployment, she was called by CID regarding an investigation into the first sergeant that was initiated in response to another soldier allegations that the first sergeant was harassing her and that she had been passed up for promotion after refusing the advances of him. This was the first time she was aware that another soldier had also been harassed.

h. She was extremely upset, hurt and humiliated that her earlier report was not believed when she reported the first sergeant, but another soldier's later complaint was believed and resulted in a formal investigation by CID. She was very hurt that CID had not believed her before but believed this other soldier because she was denied promotion to E5 status. That made her feel humiliated because she felt as if she was a nobody, and her service did not matter to her chain of command. As a result, she did not open-up to or cooperate with CID about the first sergeant's harassment of her.

i. Following the CID investigation, the first sergeant was eventually stripped of his rank, but was not discharged. Instead, he remained in Iraq with her unit. He was very angry at her, blaming her for the CID investigation. He still had his weapon, and she was terrified he would harm her. She returned home to the U.S. on Environmental Moral Leave (EML) in January 2006 to get away from him. She tried to extend her EML leave but was not able to. Instead, she was going to be returned to Iraq, to be face-to-face with the first sergeant again. She could not go back. In order to avoid redeployment, she lied to her staff sergeant that she was pregnant, and she forged some forms to support her story. Her unit required her to take a pregnancy test, which she failed, and she received an article 15 punishment in March 2006 as a result.

j. She knows that she should not have lied or forged the forms, but she was so scared, and she could not go back to Iraq. She knew that if she went back the harassment and anger from the first sergeant would start again, and she truly believed he would hurt her. She was so scared, and she felt like she did not have any other options. She was sure if she went back to Iraq something worse would happen.

k. Around the same time, she finally decided to tell her husband about what was going on with the first sergeant. She told him about the harassment and how she was scared to return to Iraq. Her husband was upset that she had waited so long to tell him, and they had a fight. They were not able to reconcile at the time, and he left. Her husband had been their childcare for their two young children, ages 2 and 4, and she was unable to find another reliable childcare. Because she was not able to find childcare, she was not able to provide childcare information to her unit and had to bring her children with her to the base, which led to two misconduct write-ups in March and April 2006. She tried to find childcare, but she had been relying on her husband and was not able to find a replacement. As stated in her discharge paperwork, the reasons for her discharge were "an escalating pattern of misconduct since returning to the US on EML from her unit's deployment to Iraq." Major F. recognized that the problems leading to her discharge did not start until she returned from Iraq. In fact, all the incidents identified in her discharge paperwork took place after returning to the US on EML. All her actions were a direct result of her attempts to avoid returning to Iraq. She could not go back. She would have rather died.

l. She was discharged from the Army in June 2006 with an OTH characterization. She was told by her staff sergeant, who knew of the harassment she had endured from the first sergeant, that if she accepted the OTH discharge, she could upgrade after waiting six months. Since she believed she could upgrade her discharge, she accepted the OTH discharge without seeking a review. Her chain of command, which was supposed to protect her, failed her not only by "sweeping" the reported harassment under the rug but also giving her false guidance on her discharge.

m. After her discharge, she returned to Parkton, North Carolina with her two children. She began working as a childcare worker at a daycare, remaining in that position for about two years. She was then employed by Eaton Corporation for over 10 years. She was promoted to a team-lead on the receiving docks. She felt that she could not be promoted any higher at Eaton as she would need to obtain additional schooling, which she could not afford, and with the OTH discharge she could not apply for educational benefits that she paid for while enlisted. She then went to work for Smithfield Distribution as a route planner for about one year and then started as an inside sales representative for Cornerstone Building Brands as a customer service specialist which manufactures roofing materials. Even at her current job, she does not think she will be able to be promoted with her OTH discharge.

n. In addition to the issues, she has faced due to her discharge status, she has also suffered from PTSD. During her deployment, her unit came under mortar fire when the Forward Operating Base and motor pool were attacked. Due to the stress of that attack, one of her fellow soldiers took his own life. Both the attack and the suicide have haunted her for a long time, and she has sought therapy for her PTSD symptoms.

o. In 2006 after her separation from the military, she reconciled with her husband, and they had two additional children. Her children are now ages 21, 19, 16, and 15, with two currently attending college and two in high school. She is actively taking classes in pursuit of a Business Administration degree so she can increase her career prospects. She is also the Sunday School Superintendent, the youth coordinator, and an Exhorter at Hatcher's Chapel AME Zion Church. To obtain her Exhorter's license, her character had to be passed by a board of bishops to obtain ordination. She is also the Chaplain and Secretary of Special Delivery Motorcycle Club, which performs community service events, and a member of the local ERG (unknown) Veteran Group.

3. Counsel states the applicant is a former servicemember of the United States Army who deployed to Iraq. In May 2006, she received non-judicial punishment under AR 635-200, Chapter 14-12b for alleged misconduct. She was discharged on 7 June 2006 under OTH conditions with the narrative reason for separation as "Patterns of Misconduct."

a. On 25 July 2018, the Secretary of Defense issued Guidance to Military Discharge Review Boards and Boards for Correction of Military/ Naval Records Regarding Equity, Injustice, or Clemency Determinations (the "Wilkie Memo"). The Wilkie Memo, noting that the "Military Departments have the authority to upgrade discharges or correct military records to ensure fundamental fairness," laid out a series of factors that the Board should consider. As described in detail below, the applicant's discharge characterization should be upgraded because the quality of her service to the United States as a member of the Armed Services and her post-discharge conduct outweigh the misconduct for which she was discharged.

b. Since she separated from the US Army, the military's views concerning the impact that military sexual trauma (MST) had on the behaviors contributing to discharge have changed significantly. As set forth below, these changes along with her post-discharge record warrant an upgrade in her characterization of service and authority for separation.

c. Counsel describes background from the applicant's service and MST. Counsel restates much of the applicant's statement above. Each of the counts of misconduct alleged against her happened during and/or after the harassment suffered at the hands of her first sergeant. Her ability to perform her duties was detrimentally impacted by the ongoing and persistent harassment she faced while enlisted. For example, her

misconduct related to her failure to return to duty were both related to attempts to avoid being sent to Iraq with her harasses. Similarly, her counseling regarding childcare was directly related to her husband's departure after learning of the harassment she had endured from her former first sergeant.

d. Counsel also describes her transition to civilian life. Counsel restates the applicant's work history, how she reconciled with her husband, and how she is involved with community activities.

e. Counsel argues the applicant's MST and PTSD were not considered by the board in her previously denied application to the Army Discharge Review Board (ADRB). The Board, failed to consider the direct contribution of the MST suffered by the applicant to the reasons for her discharge from service.

f. On 25 August 2017, the Department of Defense (DoD) issued Clarifying Guidance to Military Discharge Review Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment (the "Kurta Memo," Exhibit F) which outlined a liberal consideration standard for review of discharge upgrade petitions in which MST or other mental health conditions are a factor. These factors were further expanded in the Wilkie Memo in 2018. The Kurta Memo and the Wilkie Memo represent a change in the standards and considerations applied to situations including MST, such as the applicant's, as compared to the standards applied by the ADRB in September 2014.

g. Counsel states recent DoD guidance, particularly the Wilkie Memo and the settlement in Kennedy, demonstrates that the applicant's discharge should be upgraded. The particularly relevant factors are of the effects of her MST, nonviolent offense, acceptance of responsibility, remorse and atonement, evidence of rehabilitation, job history, and community involvement and service. Although all the factors should be considered, the more relevant factors are specifically described below, and demonstrate why the Board should favor granting relief for her. Counsel describes in detail for following areas:

- Her misconduct is mitigated by the fact that she was likely suffering from an untreated mental health condition at the time due to her experience of MST
- She was young when the incidents leading to discharge occurred
- The applicant did not commit a violent offense and no other person was harmed by her misconduct
- She has shown acceptance of responsibility, remorse and atonement, and evidence of rehabilitation
- She has maintained an extensive job history

- She has character and reputation references that support upgrading her discharge characterization

h. In conclusion counsel states that the Wilkie Memo states an "honorable discharge characterization does not require flawless military service." The applicant's service, similar to so many others, was not flawless. However, she was placed in a difficult stressful position while serving our country, including deployment to Iraq, surviving MST, and struggling to cope on her own after being ignored by her chain of command. When liberally considering all of the facts, the mitigating factors provided for in the Wilkie memo, and the absence of any aggravating factors, it is just and equitable for the Board to upgrade her discharge characterize to properly reflect the overall quality of her honorable service in support of our nation and our freedom as citizens of this great country.

i. Lastly, for the foregoing reasons, the applicant respectfully requests that the Board (i) upgrade her OTH discharge characterization to Honorable or General, Under Honorable Conditions, (ii) change her narrative reason for separation and separation authority to Secretary Authority or Miscellaneous/General Reasons, and (iii) issue a revised DD Form 214 at the earliest practicable opportunity. (The full counsel brief is attached in supporting documents for the Boards review).

4. The applicant enlisted in the Regular Army on 7 October 2003. She held military occupational specialty 42A (Human Resources Specialist). She served in Iraq from 25 September 2005 – 22 January 2006

5. Her separation packet has several infractions.

a. She received several three DA Form 4856 (Developmental Counseling Form) on/for (various reasons):

- 10 February 2005 (Missed formation)
- 9 September 2005 (Denial of promotion) due to failed Army Physical Fitness Test
- 28 November 2005 (Failure to be at appointed place of duty and failure to maintain positive security of her weapon)

b. On 17 February 2006, a DA Form 3349 (Physical Profile) for pregnancy was presented.

c. Several DA Form 2823 (Sworn Statements) were conducted:

- R.G. on 24 February 2006, stating in part the profile dated 17 February 2006, she did not complete because she was out of the country

- C.F. on 24 February 2006, relating to the profile which was presented
- M.C. on 24 February 2006, stating in effect the profile that was presented did not come from their clinic nor was the signatures those of the providers listed

d. DD Form 689 (Individual Sick Slip) dated 27 February 2006, stating the applicant would not participate in S.T.A.R.S. (unknown) physical training (PT) due to medical conditions.

e. DA Form 2823 (J.T.) on 27 February 2006, relating to the pregnancy profile presented not looking right and she went to check it out at the clinic.

f. DD Form 689 dated 28 February 2006, stating the applicant is to have PT at her own pace and distance for 90 days.

g. Two other DA Form 2823 (A.M. and C.F.) dated 28 February 2006, related to the profile presented and a conversation had with another Soldier in the unit.

h. DA Form 2823 (C.D. (the applicant)) dated 1 March 2006, where in effect she admitted to falsifying the profile that was placed in her master sergeant's inbox.

i. DA Form 4856 dated 1 March 2006, regarding (submitting false (forged) DA Form 3349 and DD Form 689).

j. Three other DA Form 2823 (C.F.) dated 2 March 2006, submitted two statements regarding the pregnancy, abortion, how it was paid for and the location. (D.A.) on 3 March 2006, stated in effect statement about going to get proof of pregnancy, where she was seen, where she got an abortion, how she paid, and going by the bank to get proof of the check the applicant stated she paid with was no proof.

k. Medical documents and email sent 7 March 2006, from the senior Human Resources Sergeant, attempting to gain information in reference to the applicant's claims of pregnancy.

l. On 22 March 2006, the applicant received non-judicial punishment under the Uniform Code of Military Justice (UCMJ), for:

- On or about 21 February 2006, with intent to deceive, present an altered official record DA Form 3349 pregnancy profile, which record was totally false in that she was never seen by the providers mentioned, and was then known by her to be false
- On or about 28 February 2006, with intent to deceive, present an altered official record, to wit: DD Form 689, Individual Sick Slip, which record was totally false in that you were never seen by the provider mentioned

- On or about 28 February 2006, with intent to deceive, make to J.F. (RNC WHNP) of the OBGYN clinic an official statement, to wit: "I am pregnant," or words to that effect, which statement was totally false, and was then known by you to be so false
 - On or about 1 March 2006; in a course of justice, and in a statement under penalty of perjury pursuant to section 1746 of Title 28, United States Code, willfully and corruptly subscribed a false statement material to the matter of inquiry, to wit: "Q: Are you actually pregnant? A: Yes." which statement was false in that you were not pregnant at that time, and which statement you did not then believe to be true
 - On or about 17 February 2006, conspire with another to commit an offense under the UCMJ, to wit: Article 107, False Official Statement, and in order to affect the object of the conspiracy, the said person did assist her in falsifying the documents
 - She was reduced to private/E-1 and forfeiture of \$636 for 1 month was suspended to be automatically remitted if not vacated before 21 June 2006
- m. Two other DA Form 4856 on/for the following reasons:
- 23 March 2006, failure to repair
 - 24 March 2006, tardy
- n. DA Form 2823 (A.B.), 3 April 2006, related to the applicant and a stolen credit card.
- o. DA Form 2823 (M.J.), 6 April 2006, related to the applicant's childcare location and provider for her children.
- p. DA Form 4856, 7 April 2006, regarding proper childcare.
- q. Three other DA Form 2823:
- (S.S.) on 12 April 2006, relating to the inability to verify childcare information which was provided by the applicant and lies that came from trying to verify the information provided
 - (W.K.) on 13 April 2006, relating to accessing his work computer with another member's login and password
 - (C.F.) on 13 April 2006, related to trying to locate where her kids provider was located and the phone conversation with her husband
- r. DA Form 4856, 13 April 2006, regarding verification of her childcare provider and location.

s. DA Form 2627-2 (Record of Supplementary Action under Article 15, UCMJ) shows on 18 April 2006, the officer who imposed punishment vacated her suspension of forfeiture of \$636.00 for one month due to failure to provide accurate childcare.

t. On 19 April 2006, two DA Form 4856's show she was counseled for:

- Mental health evaluation
- Separation initiation

6. The applicant underwent a separation physical on 24 April 2006, and was found qualified for chapter/separation.

7. On 26 April 2006, she underwent a mental examination, which she was found psychiatrically cleared for any administrative action deemed appropriate by command to include chapter 14 separation.

8. On 28 April 2006, (S.A.M.) completed a DA Form 2823, stating on 23 March 2006, he had to ask the applicant to discontinue use of the computer in the Emergency Operations Center under someone else's login. The applicant was using D.C.'s login.

9. On 4 May 2006, her commander notified her of his intent to separate her under the provisions of AR 635-200, chapter 14, paragraph 14-12b. The reasons for his proposed action were an escalating pattern of misconduct that has occurred since returning to the U.S. on Environmental Morale Leave (EML) from her unit's deployment to Iraq. She falsified documents and feigned pregnancy in order to get out of returning to Iraq; she failed to follow instructions, and she otherwise exhibited conduct that is unacceptable according to the UCMJ and Army Regulations such as lying to her chain of command on several occasions, not providing accurate childcare provider information as ordered, and unauthorized computer use. She acknowledged the same day.

10. Her chain of command recommended that she be discharged under the provisions of AR 635-200, chapter 14, paragraph 14-12b, for patterns of misconduct and that she receives an under other than honorable conditions discharge.

11. On 24 May 2006, having been advised by counsel of the basis for the contemplated action to separate her for patterns of misconduct under AR 635-200, paragraph 14-12b, and its effects, of the rights available to her; and the effect of any action taken by her in waiving her rights. She waived her rights. She understood:

- She may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to her

- If she is subject to the issuance of a discharge under other than honorable conditions, she may be ineligible for many or all benefits as a veteran under both Federal and State laws
- She may expect to encounter substantial prejudice in civilian life
- If she receives a discharge certificate/character of service which is less than honorable, she may apply to the ADRB or the ABCMR for upgrading
- She realizes that an act of consideration by either board does not imply that her discharge would be upgraded

12. On 25 May 2006, the separation authority approved separation under the provisions of AR 635-200, paragraph 14-12b for a pattern of misconduct. He directed an under other than honorable conditions character of discharge.

13. Accordingly, she was discharged on 7 June 2006. Her DD Form 214 shows she completed 2 years, 8 months, and 1 day net active service this period. It also shows:

- Item 24 (Character of Service): Under Other than Honorable Conditions
- Item 25 (Separation Authority): AR 635-200, paragraph 14-12b
- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Pattern of Misconduct

14. On 12 September 2014, the ADRB after careful review of her application, military records, and all other available evidence, the ADRB determined that she was properly and equitably discharged. Accordingly, her request for a change in the character and/or reason of her discharge was denied.

15. During the processing of this case a request was made to Department of the Army, Criminal Investigation Division (DACID) for sanitized copies of Law Enforcement Reports from DACID. In response DACID, returned a search of the Army criminal file indexes utilizing the information provided revealed no (Sexual Harassment) records pertaining to the applicant. Be advised that records at this center are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

16. The applicant provides:

- a. Exhibit A: The Wilkie memo in support of her claim.
- b. Exhibit C: Military record in support of her claim. Including enlistment documents, separation packet (109 pages), statement in support of her claim to the Department of

Veterans Affairs (DVA), DVA letter denying her claim, sonogram, and medical and dental records (197 pages).

c. Exhibit D: Exhorter's license in the African Methodist Episcopal Zion Church so long as life and conduct comport with the Gospel rule and conforms to the Discipline of the above-named Church issued on 15 September 2023.

d. Exhibit E: Kurta memo in support of her claim.

e. Exhibit F: Service record in support of her claim (173 pages).

f. Exhibit G: Character letter (R.R.M.) her pastor for the past five years, attesting to her leadership, communication skills, and overall commitment to the work of the church. (The entire letter is available for review in supporting documents).

g. Exhibit H: Character letter (M.S.W.) her friend for years, met through their husbands and established an amazing bond. Since they met, she always had known her to be guarded and somewhat agitated by men, especially those that she does not really know. She did not want to pry in the beginning but then she noticed some things that really bothered her and as someone who has dealt with sexual trauma in the past, she knew some of the signs all too well. She explained some of the things the applicant shared with her about her experiences. (The entire letter is available for review in supporting documents).

h. Exhibit I: Character letter (K.D.) her husband, knowing her since 1999. He explained how she told him of the harassment she was receiving from her first sergeant. He explained how different she was as his wife and how closed off she was. He also explained leaving and her life after she was out of the military. (The entire letter is available for review in supporting documents).

17. By regulation, AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

18. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct.

19. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

20. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting upgrade of her under other than honorable conditions (UOTHC) discharge to honorable as well as more favorable corresponding narrative reason and separation code. She contends MST as related to her request.

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 7 October 2003.
- She served in Iraq from 25 September 2005 – 22 January 2006
- On 22 March 2006, the applicant received non-judicial punishment under the Uniform Code of Military Justice (UCMJ), for:
- On or about 21 February 2006, with intent to deceive, present an altered official record DA Form 3349 pregnancy profile, which record was totally false in that she was never seen by the providers mentioned, and was then known by her to be false
- On or about 28 February 2006, with intent to deceive, present an altered official record, to wit: DD Form 689, Individual Sick Slip, which record was totally false in that you were never seen by the provider mentioned
- On or about 28 February 2006, with intent to deceive, make to J.F. (RNC WHNP) of the OBGYN clinic an official statement, to wit: "I am pregnant," or words to that effect, which statement was totally false, and was then known by you to be so false
- On or about 1 March 2006; in a course of justice, and in a statement under penalty of perjury pursuant to section 1746 of Title 28, United States Code, willfully and corruptly subscribed a false statement material to the matter of inquiry, to wit: "Q: Are you actually pregnant? A: Yes." which statement was false in that you were not pregnant at that time, and which statement you did not then believe to be true
- On or about 17 February 2006, conspire with another to commit an offense under the UCMJ, to wit: Article 107, False Official Statement, and in order to affect the object of the conspiracy, the said person did assist her in falsifying the documents

- DA Form 2823 (A.B.), 3 April 2006, related to the applicant and a stolen credit card.
- On 28 April 2006, (S.A.M.) completed a DA Form 2823, stating on 23 March 2006, he had to ask the applicant to discontinue use of the computer in the Emergency Operations Center under someone else's login. The applicant was using D.C.'s login.
- On 4 May 2006, her commander notified her of his intent to separate her under the provisions of AR 635-200, chapter 14, paragraph 14-12b. The reasons for his proposed action were an escalating pattern of misconduct that has occurred since returning to the U.S. on Environmental Morale Leave (EML) from her unit's deployment to Iraq. She falsified documents and feigned pregnancy in order to get out of returning to Iraq; she failed to follow instructions, and she otherwise exhibited conduct that is unacceptable according to the UCMJ and Army Regulations such as lying to her chain of command on several occasions, not providing accurate childcare provider information as ordered, and unauthorized computer use. She acknowledged the same day.
- Her DD Form 214 shows the applicant was discharged on 7 June 2006 under the provisions of AR 635-200, paragraph 14-12b for pattern of misconduct. Her service was characterized as under other than honorable conditions (UOTHC) with Separation Code: JKA and Reentry Code: 3. She completed 2 years, 8 months, and 1 day net active service this period.
- On 12 September 2014, after careful review of her application, military records, and all other available evidence, the ADRB determined that she was properly and equitably discharged. Accordingly, her request for a change in the character and/or reason of her discharge was denied.

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 separation was a direct response to continual sexual harassment from her first sergeant, who began harassing her shortly after joining his unit and continued through deployment in Iraq, including groping and unwanted advances. She attempted to address this harassment through her command but was ignored and belittled. Her actions were a result of her belief that the harassment would escalate into violence. She has been an exemplary member of her community since her separation and should be granted a discharge status upgrade on the grounds of equity and justice.

d. Active-duty electronic medical records available for review show the applicant underwent a separation physical, on 25 April 2006, and was found qualified for chapter/separation. On 26 April 2006, she participated in a mental status evaluation for the purpose of separation. She did not present with any behavioral health concerns or disorder and was psychiatrically cleared for any administrative action deemed appropriate by 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. The applicant requested behavioral health services on 8 January 2024 related to her experience of MST and symptoms of depression. On 16 May 2024, she participated in an intake assessment with the Mental Health Trauma Specialty Program (TSP) and was diagnosed with PTSD. The applicant reported a history of childhood trauma as well as MST; sexual harassment and aggressive groping. The applicant started therapy via the TSP on 21 May 2024 and the record shows ongoing continued participation in therapy.

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 experienced sexual harassment/MST and developed a subsequent mental health condition that partially 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 sexual harassment/MST.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant reports being sexually harassed by her first sergeant. The applicant's service record shows that most of her misconduct occurred after she returned from her deployment from Iraq where she described experiencing escalating sexual harassment/assaults by her perpetrator as well as fear for her life. She was separated from military service due to falsifying documents and feigning pregnancy to avoid returning to Iraq, failing to follow instructions, lying to her chain of command on several occasions, not providing accurate childcare provider information as ordered, and unauthorized computer use. The applicant's misconduct related to avoiding returning to Iraq, specifically falsifying documents and feigning pregnancy as well as not providing accurate childcare provider information, would be mitigated by her experience of MST. The applicant reports attempting to avoid returning to Iraq where her perpetrator was located. Her behaviors to avoid returning to where her abuser was located are consistent with a victim attempting to prevent further victimization and would be mitigated by her experience of MST. In addition, as there is an association between MST and difficulty with authority, her failing to follow instructions, would be mitigated by her experience of MST. However, her lying to her chain of command on several occasions, with the exception of lying as a mechanism to prevent further victimization, and unauthorized computer use would not be mitigated since MST does not impact the

capacity to distinguish right from wrong and act in accordance with the right. However, given that her experience of MST far outweighs her unmitigated misconduct, it is recommended the Board consider granting the applicant relief. While in-service, the applicant reports experiencing MST in the form of sexual harassment and assault (physically groped and restrained) that impacted her mental health and her behavior as a soldier. Overall, 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 with an honorable characterization of service at the time of discharge.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant partial relief by upgrading to General, Under Honorable Conditions based upon the misconduct involved and the partial mitigation found by the medical advisor. However, based upon the pattern of misconduct throughout the military service period and some of that misconduct failing to be mitigated by any medical condition, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service, separation authority, separation code and/or narrative reason for separation.

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.

[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, 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. Army Regulation (AR) 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.
3. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to

their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, by reason of pattern of misconduct. The SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, paragraph 5-3 with a narrative reason of "Secretarial Authority." The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

5. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit.

Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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//