

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240002901

APPLICANT REQUESTS:

- an upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record), 2 January 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 October 2007
- Department of Veterans Affairs (VA) medical letter, 15 May 2023
- Memorandum for VA, from Special Victims' Counsel, 26 May 2023
- medical letter, from A\_\_\_\_. Health Medical Group, 1 June 2023
- Medical documentation, from My HealtheVet, 23 December 2023
- DA Form 1559 (Inspector General Action Request), 3 January 2024
- VA documents

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 knows her discharge was the result of her post-traumatic stress disorder (PTSD) established from her military sexual trauma (MST). She was 16-years old when she was victimized by her recruiter, she was afraid of the repercussions if she reported and even at the time, she did not know she had an option to report the MST. She is requesting an honorable discharge and is pressing charges against her recruiter for the MST and PTSD.

3. On her DD Form 149, she annotates PTSD, sexual assault/harassment, and reprisal/whistleblower are related to her request.

4. The applicant enlisted in the Army National Guard (ARNG) of the United States on 26 October 2006. She entered initial active duty for training on 14 November 2006. The highest rank she attained was private/E-1.
5. Two DA Forms 4187 (Personnel Action) shows the applicant's duty status changed from present for duty to absent without leave (AWOL) effective 25 March 2007 and from AWOL to present for duty effective 9 April 2007.
6. An additional DA Form 4187 (Personnel Action) shows her duty status changed from present for duty to AWOL effective 14 April 2007. She was discharged from the ARNG on 15 April 2007. Her National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows her service was uncharacterized with reenlistment eligibility code RE-3. She served a total of 5 months and 20 days of net service this period.
7. Two additional DA Forms 4187 (Personnel Action) shows her duty status changed from AWOL to dropped from rolls effective 16 April 2007 and from dropped from rolls to present for duty effective 16 April 2007, additionally adding the applicant surrendered to military authorities.
8. The applicant was notified on 3 May 2007, of her commander's intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 14-12c (Commission of a Serious Offense). The commander noted the applicant's status of AWOL from on or about 25 March 2007 to on or about 9 April 2007, and from on or about 14 April 2007 to on or about 16 April 2007.
9. The applicant's official military personnel file is void of documentation showing her election of rights.
10. The applicant's intermediate commander formally recommended her separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. The intermediate commander concurred with the immediate commander's recommendation on 7 September 2007, and further recommended the issuance of a UOTHC discharge.
11. The separation authority approved the recommended separation action and directed the issuance of a UOTHC discharge.
12. The applicant was discharged on 17 October 2007, under the provisions of AR 635-200, paragraph 14-12c(1), by reason of misconduct (AWOL), in the grade of E-1. Her DD Form 214 shows she received a character of service of UOTHC, with separation code JKD, and reentry code of 3. She was credited with 10 months and 18 days of net

active service with time lost from 25 March 2007 to 8 April 2007 and from 14 April 2007 to 15 April 2007. She was not awarded a military occupational specialty.

13. The applicant additionally provides:

a. A letter from the VA Staff Psychologist, dated 15 May 2023, which states the applicant is a patient who has been diagnosed with reaction to severe stress and panic disorder related to her reports of MST. She has been engaged in mental health services since 10 May 2023. She also is authorized medical care with the VA due to her responses for her MST.

b. A memorandum for the VA, dated 26 May 2023, from the Special Victims' Counsel Representation for the applicant. Stating in effect, the applicant is a Veteran seeking assistance and has filed an unrestricted report with the ARNG, filed on May 2023.

c. A letter from the A\_\_\_ Health Medical Group dated 1 June 2023 stating the patient has been under their care since 23 August 2022.

d. Her My HealtheVet medical documentation, which shows but is not limited to various medical appointments, military service information, and self-reported health information showing problems of chronic PTSD, chronic recurrent major depressive disorder, and complex PTSD.

e. Her Inspector General Action Request, showing she is requesting an upgrade of characterization of service due to MST and PTSD, compensation from the VA, and charges being pressed against her recruiter who she further addresses as assailant/rapist. Adding in her remarks that she wants her "rapist" held accountable, she was a 16-year-old child trying to serve her country and went to basic training after her MST. She knows now she was struggling with PTSD and was trying to cope.

f. Support forms for her requested action with the VA, authorizing to disclose information to the VA and general release for medical provider information to the VA.

14. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

## 16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable. The applicant contends misconduct was the result of Posttraumatic Stress Disorder (PTSD) due to Military Sexual Trauma (MST). She also indicated reprisal/whistleblower as being related to her request. The applicant asserted that she was victimized by her recruiter when she was 16-years-old. On her DD Form 149 the applicant marked administrative correction, disability, pay & allowance, and discharge/separation as the categories that related to her application. 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 Army National Guard (ARNG) on 26 October 2006 and entered initial active duty training on 14 November 2006, 2) the applicant was absent without leave (AWOL) from 25 March 2007 to 09 April 2007, and again on 14 April 2007. 3) She was discharged from the ARNG on 15 April 2007. Her National Guard Bureau (NGB) Form 22 shows her service was uncharacterized with a reenlistment eligibility code of RE-3, 4) the applicant was discharged on 17 October 2007 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c(1), by reason of misconduct (AWOL). She was not awarded a military occupational specialty. 5) the applicant provided a memorandum for the VA dated 26 May 2023 from an NGB Special Victims' Counsel Representative stating that the applicant is a Veteran seeking assistance and has filed an unrestricted report with the ARNG. The memorandum states that an unrestricted report was filed with the ARNG in May 2023.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. There were no records available in MEDCHART. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited in-service medical records were available for review via JLV from 16 February 2007 through 10 May 2007. The applicant was evaluated by BH on 10 May 2007 as part of a Chapter 14 evaluation. It was documented that the applicant reported she went AWOL on three occasions at her last command to be with her fiancé. It was further noted that the applicant reported she did not feel that she did anything 'so wrong' and that she desired to stay in the Army. The applicant also indicated she intended on re-enlisting in the Army six months after her discharge. The provider diagnosed her with Adjustment Disorder with Disturbance of Conduct and she was released without limitations.

d. Records provided by the applicant as part of her application were outlined in detail in the ROP. As such, only a brief summary will be described here as it pertains to this Advisory. A letter from a VA Psychologist dated 15 May 2023 documented the applicant

has been diagnosed with Reaction to Severe Stress and Panic Disorder related to her reports of MST and was authorized care at the VA that is directly related to her MST. A memorandum from Alliance Health Medical Group dated 01 June 2023 documented the applicant had been under the care of the provider (Physician's Assistant) since 23 August 2022; however, a summary of treatment, to include diagnosis, was not specified. A copy of the applicant's Enlisted Record Brief (ERB) dated 17 October 2007 shows her PULHES as 111111, indicating she was not on a BH profile.

e. A review of JLV shows the applicant is not service-connected through the VA for any conditions. A VA BH note dated 22 May 2023 documented that the applicant reported she had spoken with the MST coordinator and now had access to psychiatry. She reported she had previously been diagnosed with PTSD by a civilian provider. It was documented that the applicant reported she was raped by her recruiter at age 16 prior to going to basic training at age 17. She was diagnosed with Major Depressive Disorder (MDD), Recurrent, Moderate, PTSD and a provisional diagnosis of Bipolar I Disorder. It was also noted that Anxiety was present with Panic. The provider further noted that the applicant presented with disorders in 'personality functioning' and may present with 'functioning Borderline Personality.' She was referred for medication management, individual therapy, and group therapy (noted as MST VVC group).

f. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable. The applicant contends her discharge was the result of PTSD as a result of MST. In-service records show the applicant was diagnosed with Adjustment Disorder with Disturbance of Conduct during a Chapter 14 evaluation. Since her discharge, records indicate the applicant has reported a history of MST with her recruiter identified as the offender and filed an unrestricted report with the ARNG in May 2023. Although the applicant is not service-connected through the VA for any conditions, she is eligible for VA services as it relates to MST. Records show she has been diagnosed by VA treating providers with MDD, Recurrent, Moderate, PTSD, Panic Disorder, Anxiety, and Reaction to Severe Stress.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends her misconduct was related to PTSD and MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of in-service records show the applicant was diagnosed with Adjustment Disorder with Disturbance of Conduct during a Chapter 14 evaluation; however, this is

not constituted as a mitigating condition as there is insufficient evidence that this was considered a chronic condition (e.g., persisted for longer than 6 months in-service) IAW AR 40-501 and therefore would fall under the purview of administrative separation. She is not service-connected through the VA for any conditions. Since being discharged from the military, the applicant has reported a history of MST that occurred prior to basic training and has filed an unrestricted report with the ARNG as of May 2023. As there is an association between avoidance behaviors and MST, there is a nexus between the applicant's experience of MST and her misconduct of going AWOL. As such, BH mitigation is supported.

h. Regarding disability, there is no evidence that the applicant was diagnosed with a BH condition in-service that was determined to fall below medical retention standards IAW AR 40-501 (i.e., no history of BH profile and no documentation of recurrent or persistence of symptoms that required extended or recurrent hospitalization). As such, there is insufficient evidence to warrant a referral to IDES for consideration of military disability/retirement.

#### 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 Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged with absenting herself from her unit from 25 March 2007 to 9 April 2007 and from 14 April 2007 to 16 April 2007. The Board noted the applicant's contention of post-traumatic stress disorder and reviewed and concurred with the medical advisor's review finding an association between avoidance behaviors and the applicant's contention of military sexual trauma as there is a nexus between her AWOL period and her experience. Based on a preponderance of the evidence, the Board concluded relief was warranted to upgrade her discharge to honorable.

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:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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 October 2007 to show an honorable characterization of service.

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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 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 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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). Separation code "JKB" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14, Section II, by reason of misconduct.

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

a. 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.

b. 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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of



misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//