

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003564

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her discharge characterization to honorable and correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her narrative reason for separation as "Secretarial Authority" or "Miscellaneous/General Reasons." Additionally, she requests 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)
- Legal Brief, dated 8 January 2024
- DD Form 214 and voided copy, for the period ending 17 March 1987
- Exhibit A, Army Board for Correction of Military Records (ABCMR) Docket Number AR20220007416, Record of Proceedings, dated 21 February 2023 and Decision Letter, dated 26 February 2023
- Exhibit B, Petition for the Review of Discharge, dated 15 April 2022
- Exhibit C, Corrected DD Form 214, issued on 9 March 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the ABCMR in Dockets Number AR20070018325 on 4 April 2008 and AR20220007416 on 21 February 2023.

2. The applicant states she was sexually assaulted while serving in the Army. She continues to struggle with the symptoms of military sexual trauma (MST) disorder and post-traumatic stress disorder (PTSD). Under the mandated liberal consideration standards, the Board should revise her discharge characterization to "honorable" and revise her narrative reason for separation to "Secretarial Authority" or "Miscellaneous/General Reasons."

3. As a new argument, counsel states:

a. Docket Number AR20220007416, reviewed on 21 February 2023, shows the Board upgraded the applicant's character of service to under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor explicitly recommended that the applicant's narrative reason for separation be amended to "Secretarial Authority." The associated decision letter demonstrates that the Board reviewed and generally agreed with the Medical Advisor's conclusions. The applicant received a corrected copy of her DD Form 214, on or about 9 March 2023, which reflected her upgraded discharge characterization. However, no change was made to her narrative reason for separation.

c. It is believed this was inadvertent. The Board explicitly decided against amending the separation authority, separation code, and reentry code of her DD Form 214. However, the Board did not explicitly reject the Medical Advisor's recommendation that the narrative reason for separation be amended to "Secretarial Authority."

4. The applicant enlisted in the Regular Army on 1 April 1982, for a 3-year period. Upon completion of initial entry training, she was awarded military occupational specialty 71L (Administrative Specialist). She reenlisted on 4 January 1985. The highest rank she attained was sergeant/E-5.

5. The applicant served in the Republic of Korea on two separate occasions:

- on or about 18 August 1982 until on or about 17 August 1983
- on or about 10 December 1985 until on or about 1 May 1986

6. Following a period of approved leave, the applicant was reported as absent without leave (AWOL), on or about 2 May 1986, and was dropped from the rolls on 2 June 1986. She surrendered to military authorities at Fort Ord, CA, on 13 August 1986, and was subsequently returned to duty.

7. Court-martial charges were filed against the applicant on 20 August 1986 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 2 May 1986 until on or about 13 August 1986.

8. The applicant consulted with legal counsel on 20 August 1986.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge (UOTHCD), and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion. She further acknowledged understanding if her discharge request were approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Department of Veterans Affairs, and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised she could submit any statements she desired in her own behalf. She elected not to submit a statement.

9. The applicant's immediate and intermediate commanders recommended approval of the request for discharge and further recommended a UOTHC discharge.

10. On 13 January 1987, the separation authority approved the request for discharge, and directed the applicant be reduced to the lowest grade possible and the issuance of an UOTHC discharge certificate.

11. The applicant was discharged on 17 March 1987, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. Her DD Form 214 shows she received an UOTHC characterization of service with separation code KFS and reentry code RE-3, 3B, and 3C. She completed 4 years, 8 months, and 4 days of net active service, with lost time from 2 May 1986 to 12 August 1986. She was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal
- Army Commendation Medal
- Army Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle bar (M-16)
- Noncommissioned Officer Professional Development Ribbon

12. The Army Discharge Review Board reviewed the applicant's request for an upgrade of her character of service on 18 March 1998. The Board concluded the applicant's discharge was proper and equitable and subsequently denied her request for relief.

13. The ABCMR reviewed the applicant's request for a discharge upgrade on 4 April 2008. After careful consideration, the Board determined the evidence presented did not

demonstrate the existence of a probable error or injustice. Her request for an upgrade of her character of service was denied.

14. On 21 February 2023, the ABCMR reconsidered the applicant's request for an upgrade of her service characterization and considered a new request for a change in her narrative reason for separation.

a. In the processing of this case, the ARBA Medical Advisor provided an advisory opinion, wherein it was noted that although the applicant did not report any behavioral health symptoms while in active service, she has been actively involved in behavioral health treatment for PTSD as a result of MST since 2019. The Agency Behavioral Health (BH) Advisor opined that there was sufficient evidence to support the applicant had a condition which mitigated her misconduct. The BH Advisor further recommended the applicant's narrative reason for separation be amended to "Secretarial Authority."

b. The Board reviewed and agreed with the medical advisor's finding a nexus between the applicant's experience of PTSD and MST and the avoidant behavior of not returning from approved leave and agreed that under the liberal consideration memorandum, the applicant's contention of MST was sufficient to be considered by the Board. The Board determined the applicant's service did not rise to the level required for an honorable discharge, but it did warrant an upgrade to under honorable conditions (general).

c. The Board recommended the applicant's DD Form 214, for the period ending 17 March 1987, be amended to show an under honorable conditions (general) character of service with no change to the separation authority, separation code, or reentry code.

d. The applicant was issued a new DD Form 214 on 9 March 2023.

15. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

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

17. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request for an upgrade of her discharge characterization to honorable and correction of her

DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her narrative reason for separation as “Secretarial Authority” or “Miscellaneous/General Reasons.”

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 1 April 1982 and reenlisted on 4 January 1985.
- The applicant served in the Republic of Korea on two separate occasions:
 - on or about 18 August 1982 until on or about 17 August 1983
 - on or about 10 December 1985 until on or about 1 May 1986
- Following a period of approved leave, the applicant was reported as absent without leave (AWOL), on or about 2 May 1986, and was dropped from the rolls on 2 June 1986. She surrendered to military authorities at Fort Ord, CA, on 13 August 1986, and was subsequently returned to duty.
- Court-martial charges were filed against the applicant on 20 August 1986 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 2 May 1986 until on or about 13 August 1986.
- The applicant consulted with legal counsel on 20 August 1986. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- The applicant was discharged on 17 March 1987, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. Her DD Form 214 shows she received an UOTHC characterization of service with separation code KFS and reentry code RE-3, 3B, and 3C. She completed 4 years, 8 months, and 4 days of net active service, with lost time from 2 May 1986 to 12 August 1986.
- On 21 February 2023, the ABCMR reconsidered the applicant’s request for an upgrade of her service characterization and considered a new request for a change in her narrative reason for separation. The Board recommended the applicant’s DD Form 214, for the period ending 17 March 1987, be amended to show an under honorable conditions (general) character of service with no change to the separation authority, separation code, or reentry code.

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, she was sexually assaulted while serving in the Army. She continues to struggle with the symptoms of military sexual trauma (MST) disorder and post-traumatic stress disorder (PTSD). Under the mandated liberal consideration standards, the Board should revise her discharge characterization to “honorable” and revise her

narrative reason for separation to “Secretarial Authority” or “Miscellaneous/General Reasons.”

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for MST-related PTSD. The applicant initially sought services via the VA in September 2018 due to symptoms of PTSD including anxiety and depression. She reported an extensive psychiatric treatment history including one prior psychiatric hospitalization due to a suicide attempt in 1997 and ongoing treatment via psychotherapy and medication. She was initially treated via psychiatry. In September 2019, she was provided specialty care via the Sexual Trauma Treatment Program (STTP). During her in-depth intake session for the program, she reported a second suicide attempt via overdose in 1998 as well as a history of cutting and an eating disorder in remission. The applicant described her MST as follows: “on December 21, 1982, on a base in Korea, she was gang raped and beaten in the military by Sgt who continually harassed her and repeatedly asked her out. When patient agreed, he took her to a bar then pretended to forget his wallet to go back to his apartment. When they went back to the apartment there were three men. She said, ‘Is there a party?’ ‘No, you’re the party.’ Veteran reported two other girls there. She only recalled being in the living room and then possibly hit over the head and dragged to the next room.” The electronic medical record shows the applicant receives ongoing holistic care for her extensive psychiatric and medical issues via the VA’s multi-specialty program including psychiatry and supportive services.

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 had an experience of MST and a subsequent BH condition that mitigates her misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST while in military service and is 70% service connected for MST-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to one specification of being AWOL. The applicant is service connected for MST-related PTSD. Given the association between MST and avoidant behavior, there is a nexus between the applicant’s experience of MST and her

misconduct of being AWOL. In accordance with the ARBA policy regarding MST and liberal consideration, it is recommended, per the applicant's request that her character of service be upgraded to Honorable, and her narrative reason be changed to Secretarial Authority.

BOARD DISCUSSION:

1. 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 through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. One potential outcome was to grant partial relief to amend the applicant's narrative reason to Secretarial Authority based on the medical review finding a nexus between the applicant's experience of MST and her misconduct of being AWOL. The panel member the applicant's character of service upgraded to under honorable (general) conditions was sufficient based on her AWOL. However, upon review through counsel of the applicant's request, available military records and medical review, the Board weighed heavily the advising official finding sufficient evidence to support the applicant had an experience of MST and a subsequent BH condition that mitigates her misconduct.
2. The Board recognized the applicant's character of service was previously upgraded to under honorable (general) conditions by ABCMR. Consideration was given The Board determined her character of service was sufficient and did not warrant upgrade to honorable based on the misconduct for AWOL and turning herself into authorities. The Board noted the applicant provided no character letters of support or post service achievements for the Board to weigh a clemency determination. The Board notwithstanding the medical opine finding a nexus between the applicant's experience of MST and her misconduct of being AWOL determined correction of the applicant's narrative reason and upgraded to honorable is not warranted.
3. 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 found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220007416 on 21 February 2023.

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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. Section 1556 of Title 10, U.S. Code, 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 Army Board for Correction of Military Records (ABCMR) applicants (and/or their counsel) prior to adjudication.

2. 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.

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

a. Regulatory guidance states that Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, are assigned separation code "KFS" with the narrative reason "in lieu of court-martial."

b. Narrative reason "Secretarial Authority" with SPD Code "KFF" for voluntary discharges and "MFF" for voluntary release from active duty (REFRAD) or transfer are to be used only when Headquarters, Department of the Army (HQDA) message or other directive authorizes voluntary separation in an individual case or category of cases.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.

c. Paragraph 3-7a provides that 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.

d. Paragraph 3-7b provides that 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.

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.

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//