

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240003630

APPLICANT REQUESTS, in effect: correction of her DD Form 214, Certificate of Release or Discharge from Active Duty, to show:

- she was discharged or retired due to a disability
- her service was characterized as honorable
- her current legal name
- a video/telephone appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Petition for Name Change
- Certificate of Naturalization
- Applicant's statement to the Department of Veterans Affairs (VA)
- Character reference
- DD Form 214
- Recruiter's letter
- VA letter
- VA Form 20-0995, Decision Review Request: Supplement Claim
- VA Rating Decision

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 that her applicant is related to post-traumatic stress disorder (PTSD), mental health issues, and sexual assault/harassment. She reported the assault, but it was never investigated or disclosed. This lack of action led her to seek a discharge. She was the victim of hate, bullying, harassment, physical assault, sexual assault.

a. She states the narrative reason listed on her DD Form 214 indicates that she failed medical physical procurement standards. Her service was uncharacterized. It was her choice to enlist in the Army as a combat interpreter not knowing she would be in a unit of 4 females and 36 middle eastern males, majority of them, with the same morals, beliefs and mentality, and no different from the people she left in her country and ran away from. These male Soldiers were all Arabian and they had ulterior motives; they were only in it for expedited citizenship. She contends that she was eligible to get her citizenship without having to enlist. The male Soldiers in her unit hated everything this country stood for. It makes her very angry. They did this to her on the Army's watch and she was left to struggle alone for years.

b. She was born in Lebanon and raised Christian Greek Orthodox. She converted in 2000 to Judaism initially, but she remains messianic, Christian Jew. She contends that she completed Basic Combat Training and was given the option to go to Physical Training and Rehabilitation Program (PTRP) because she had stress fractures. On 31 March 2006, during her Advanced Individual Training the applicant states that she was sexually assaulted by two Muslim Soldiers from Palestine because of her Jewish background. One Soldier ejaculated on her while the other tried to lift her uniform top to see if she had the Star of David tattooed on her back.

c. She was physically injured and could not seeing being deployed in 30 days and she was not able to get convalescent leave because her leadership thought she would go absent without leave (AWOL). Her only choice was to go to PTRP for six months. However, the harassment by her rapist never stopped, they would hide next to her window in the barracks while she was undressing to scare her. One of her rapist also tried to attack her but another Soldier intervened.

d. Years late in 2012, she was raped by an intruder, and she froze. She did not fight back because all she could see and think of were the two Soldiers that raped her. She felt fear, anxiety, anger, depression, hurt, and alienation. She was embarrassed and blamed herself. She has been labeled emotionally and mentally unstable.

e. Despite all her challenges, she has always been very loyal to the Army, very ethical and did everything she was told. Her instructors praised her for her advanced linguistics skills in both Arabic and English. Unfortunately, her traumatic experience ruined her career and her future. She was not aware of her Military Sexual Trauma until she recounted the event to her psychiatrist. She took an Oath when she enlisted and she honored that oath. But no female Soldier should have to take that risk serving her country. The experience ruined her military career, and her future. She is forever angry, hurt, and traumatized.

3. Prior to her enlistment, the applicant underwent a physical examination for the purpose on entering the military. The medical provider found the applicant was qualified for service. Her examination did not identify any defects or diagnoses.
4. On 1 November 2005, she enlisted in the U.S. Army Reserve. Her name is listed as FBJ on her DD Form 4, Enlistment/Reenlistment Document-Armed Forces of the United States.
5. Her military record is void of a separation package; however, her DD Form 214 shows she was discharged on 4 May 2006, under the provisions of Army Regulation 635-200, Personnel Separation-Active Duty Enlisted Administrative Separation, paragraph 5-11, failure to meet medical/physical procurement standards. His service was uncharacterized.
6. The applicant provides:
 - a. A list of follow-up appointments, 11 December 2018, following her discharge from the VA Women's Inpatient Specialty Environment of Recovery (WISER) program.
 - b. A Petition for Name Change, 9 April 2022, which shows the applicant's legal name as FE.
 - c. VA Form 20-0995, VA-Decision Review Request: Supplemental Claim, 15 August 2023, wherein the applicant made a claim for compensation for PTSD, anxiety, chronic depression due to MST.
 - d. VA Form 21-0781a, Statement in Support of Claim for Service connection for PTSD secondary to Personal Assault, 15 August 2023. The applicant provides the detail of her sexual assault and harassment on this form.
 - e. VA Rating Decision, 15 November 2023, which shows the VA granted that the applicant's service-connected PTSD and persistent depressive disorder, with anxious distress (also claimed as trauma, anxiety, depression due to MST) an evaluation of 70 percent, effective 1 November 2020.
7. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.
8. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to her characterization of discharge to Honorable and to show she was discharged due to a disability. She contends she experienced an undiagnosed mental health condition, including PTSD, and sexual assault/harassment (MST) that impacted her discharge.

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 U.S. Army Reserves on 1 November 2005.
- Her military record is void of a separation package; however, her DD Form 214 shows she was discharged on 4 May 2006, under the provisions of Army Regulation 635-200, Personnel Separation-Active Duty Enlisted Administrative Separation, paragraph 5-11, failure to meet medical/physical procurement standards. Her service was uncharacterized.

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 asserts she was sexually assaulted while in AIT, and she sought discharge because she was a victim of bullying, harassment, and physical and sexual assault. She provides an extensive account of her experiences. The application included a letter from the Houston VA dated 11 December 2018, which showed notification of a follow up appointment, and a VA claim form for PTSD. A VA Rating Decision letter dated 15 November 2023 showed the applicant is 70% service connected for PTSD, persistent Depressive Disorder, and anxious distress, and she is considered permanent and totally disabled. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed several encounters related to physical health problems (ankle, foot, and knee), and an encounter on 8 March 2006 indicated the applicant was "feeling depressed about having to go home for con leave" and was unable to sleep. She was noted to be tearful during the visit and was given a medication to help with sleep and anxiety. However, a note from the following day showed that she was taken by ambulance to a medical facility due to low blood pressure and dizziness, and documentation stated she was "very depressed and wants to go home." She reported fatigue and loss of appetite, and she was tearful and requested to see mental health (MH). She was seen for an initial visit with MH on 10 March 2006 and again on 17 March 2006, but documentation is sparse, due to the primary records being kept in a paper format within the clinic.

e. A medical visit on 17 March 2006 noted “soldier with a PH (positive history) of depression, Lexapro and Prozac, with increased depression and crying” and a MH visit on 11 April 2006 noted that the applicant signed a release to request civilian treatment records, which were received and reviewed “with documentation of her EPTS treatment.” This encounter also noted, “since family day and BCT graduation she has been unable to contain her depressive feelings,” and her diagnosis was changed from Adjustment Disorder with mixed emotional features to Depression and Anxiety Disorder not otherwise specified (NOS). A MH visit on 24 April 2006 discussed her complaints about how she is treated by others, and there is indication of the discharge process having been initiated and focus of sessions being on tolerating the environment until discharge. Documentation by a primary care provider on 26 April 2006 showed the applicant was pending discharge associated with her EPTS MH condition, and the applicant’s last encounter with DoD MH was on 3 May 2006.

f. The applicant-initiated services through the VA on 11 May 2006 when she called seeking help for back pain and depression. She had several phone contacts where she discussed wanting to return to the military, barriers to engagement in care, and housing problems. Her next encounter was on 21 July 2015 where she reported a history of PTSD associated with sexual trauma, but it was noted “not related to her time in the Army.” Her non-VA antidepressant medication was refilled, and she was referred to establish care but presented as a walk-in again in September 2015 having run out of medication. Her diagnosis was PTSD, and it, again, was reported to not be MST related. Documentation from a referral for PTSD treatment showed the applicant’s primary trauma as being a 2012 home invasion and sexual assault and childhood physical and sexual abuse. The applicant has been a high utilizer of mental health VA care, both inpatient (in 2017) and outpatient.

g. Documents from Compensation and Pension (C&P) examinations from 2018, 2020, February 2023, and October 2023 were reviewed and all showed she endorsed the requisite number of symptoms to warrant a diagnosis of PTSD as well as Major Depressive Disorder. The C&P from 2018 showed she reported her primary trauma exposure was the assault and rape that occurred in 2012, and there was no indication of any in-service trauma. She reported her discharge was due to physical problems and mental health issues related to being separated from her son while in BMT and AIT. Records from a U.S. Army Reserve Counseling Form dated 27 April 2006 were referenced and noted a 12-year history of treatment for depression prior to joining the military, and it was indicated that there was no objective evidence found to support a change in the severity of her condition due to her military service.

h. The 2020 C&P exam also included a diagnosis of Alcohol Use Disorder, and trauma experience was again reported as the 2012 rape. However, the applicant also discussed “mental abuse” (i.e. name-calling; superiors being upset with her performance) that occurred while in service. Documentation from the February 2023

examination showed that the applicant was in the Army Reserves from 2006 until 2014, had a history of mental health treatment dating back to EPTS, had a hospitalization in 2017 due to self-harming behaviors, and was currently in treatment. No in-service military trauma was reported. Finally, documentation from the exam in October 2023 showed she reported her primary stressor as a sexual assault/MST she experienced in 2006, and she relayed a similar account to what is included in her application. She also stated she served in combat in Iraq while in the Army Reserves and was required to discharge her weapon at two people and witnessed other soldiers injured and killed.

i. She also disclosed additional traumatic experiences, including sexual assault in childhood, the 2012 rape previously disclosed, physical assaults both prior to and after her time in service, and combat and terroristic attack-related trauma exposure from growing up in Lebanon. The evaluator noted that it was common for people who experienced MST to not disclose this during previous exams due to fear/shame and a desire to avoid thinking or talking about the trauma, and the applicant indicated this was the case for her as well.

j. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the Disability Evaluation System (DES) for a medical discharge. Documentation from the applicant's time in service showed that her mental health condition existed prior to service, which was the impetus to her discharge related to failure to meet medical/physical procurement standards, and she was appropriately discharged under Army Regulation 635-200, Personnel Separation-Active Duty Enlisted Administrative Separation, paragraph 5-11. As to the request for consideration of an honorable characterization of service, the applicant asserts a fully mitigating experience, MST, and this warrants consideration by the board.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted a fully mitigating experience, MST, and documentation from her time in service showed she was treated for an Adjustment Disorder, Depression, and Anxiety Disorder. The applicant is 70% service connected for PTSD by the VA and has received extensive mental health treatment related to her trauma history, which was incurred prior to, during, and after her time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST, resulting in PTSD, while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant is requesting consideration of a change in her uncharacterized discharge to an honorable discharge and a change to the narrative reason for

separation to “discharged or retired due to a disability.” Documentation from her time in service showed that she was discharged due to a mental health condition that existed prior to service, and she requested discharge secondary to distress related to being separated from her son. There is insufficient evidence from her time in service to support a referral to the DES. However, had the MST never occurred, the applicant’s EPTS mental health condition might not have been exacerbated, and she might have been able to successfully complete her military training and term of service. Under Liberal Consideration, there is sufficient evidence to support the board’s consideration of a change to her characterization of discharge.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board 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. Upon review of the applicant’s petition, available military records and the medical advisory, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the Disability Evaluation System (DES) for a medical discharge. Documentation from the applicant’s time in service showed that her mental health condition existed prior to service, which was the impetus to her discharge related to failure to meet medical/physical procurement standards, and she was appropriately discharged under AR 635-200, paragraph 5-11. As to the request for consideration of an honorable characterization of service, the applicant asserts a fully mitigating experience, MST, and this warrants consideration by the board.

2. Kurta Questions:

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3. The Board noted her legal name change, as documented in the U.S. District Court for the Southern District of Texas, and found sufficient evidence to correct her DD Form 214 to reflect her current legal name. However, the Board found insufficient evidence to support a correction of her DD Form 214 to show discharge or retirement due to disability. The applicant’s DD Form 214 indicates she was discharged under the provisions of AR 635-200, paragraph 5-11, for failure to meet medical/physical procurement standards, and her service was uncharacterized. The applicant’s record is absent any indication in the available record that she was referred to the Integrated Disability Evaluation System (IDES) or that a boardable medical condition was identified at the time of separation.

4. Based on her service, the circumstances surrounding her separation, and the equity guidance for discharge review, the Board determined that partial relief is warranted. As such, the Board upgraded her character of service from uncharacterized to honorable and corrected her DD Form 214 to reflect her current legal name.

5. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 showing in:

- Item 1(Name) As shown on the U.S. District Court for the Southern District of Texas - Petition for Name Change
- Item 24 (Character of Service) Honorable

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of the applicant’s records to show she was discharged or retired due to a disability.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, 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 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 will decide cases on the evidence of record. It is not an investigative body. 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 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation. Chapter 2 provides the physical standards for enlistment/induction. This chapter prescribes the medical conditions and physical defects that are causes for rejection for appointment, enlistment, and induction into military service. Unless otherwise stipulated, the conditions listed in this chapter are those that would be disqualifying by virtue of current diagnosis, or for which the candidate has a verified past medical history. Other standards may be prescribed by Department of Defense in the event of mobilization or a national emergency.
4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 5, provides, in pertinent part, that if a Soldier is processed for failure to meet procurement medical fitness standards within the first 6 months of entry on active duty and the condition existed prior to the term of service, then the Soldier will be discharged in an entry level status with uncharacterized service.
5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3-9a.
 - b. Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for

Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-7b states 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.

d. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) HQDA on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

e. Paragraph 5-11 specifically provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty, active duty for training, or initial entry training will be separated. A medical proceeding conducted by an Entrance Physical Standards Board (EPSBD), regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at the time of enlistment, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, chapter 3. The characterization of service for Soldiers separated under this provision will normally be honorable but will be uncharacterized [entry level status] if the Soldier has not completed more than 180 days of creditable continuous active-duty service prior to the initiation of separation action.

f. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service.

The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status -

(a) For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

(b) For ARNGUS and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (AIT). (Soldiers completing Phase I BT or basic combat training (BCT) remain in entry-level status until 90 days after beginning Phase II.)

6. 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//