

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004036

APPLICANT REQUESTS: upgrade of her U.S. Army Reserve (USAR) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 9 February 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 2 August 2004
- Medical documentation, 32 pages, for patient [REDACTED] from 1 October 2001 thru 3 June 2004
- Separation request from USAR

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 requested an honorable discharge from the USAR in 2005, but this was not processed. She believes an error occurred in her official military personnel file with her discharge request being sent to the wrong address. While on active duty her son attempted suicide multiple times and she sent the documentation to her chain of command for consideration of her request for discharge.
3. On her DD Form 149, the applicant indicates other mental health is related to her request.
4. On 29 August 2000, the applicant enlisted in the USAR in the rank/pay grade of private (PV1)/E-1 for a period of 8 years.
5. Orders M-055-0005, dated 24 February 2003, ordered her to active duty for mobilization for Enduring Freedom with a report date of 28 February 2003, for a period of 365 days. Orders 03-040-00097L, dated 9 February 2004 amended the ordered

period of active duty from 365 days to 485 days, and Orders 04-120-00097L, dated 29 April 2004, amended the ordered period of active duty from 365 days to 605 days.

6. She was released from active duty on 2 August 2004, under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 4 (Separation for Expiration of Service Obligation), in the grade of E-5. Her DD Form 214 shows she received an honorable character of service with separation code LBK. She served 1 year, 5 months, and 5 days of net active service this period.

7. Orders 06-319-00132, issued by Headquarters, 81st Regional Readiness Command, Birmingham, AL on 15 November 2006, discharged the applicant from the USAR with an under other than honorable conditions discharge and reduced her in rank from E-5 to E-1, under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations).

8. Orders 06-346-00018, dated 12 December 2006, revoked Orders 06-319-00132 pertaining to the reduction and discharge of the applicant.

9. The available record is void of new discharge orders; therefore, her characterization of service is undetermined by the evidence of record.

10. The applicant provides:

a. Her requested separation packet from the USAR showing multiple developmental counseling's requesting her separation due to hardship, memorandums from her command showing she was recommended for separation due to hardship and she received a recommendation of a character of service of honorable.

b. Medical documentation for the patient, [REDACTED] showing he was under medical care due to suicidal attempt due to severe depression. [REDACTED] the applicant's son attempted suicide while the applicant was deployed in support of Operation Iraqi Freedom.

11. 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.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her U.S. Army Reserve (USAR) discharge to honorable. On her DD Form 149, the applicant indicated Other Mental Health Issues are related to her request. More specifically, she indicated that her son had attempted suicide multiple times during her deployment. She noted

that the documentation was provided to her chain of command; however, she stated it appeared that the information was not forwarded for consideration. 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 USAR on 29 August 2000, 2) she was ordered to active duty for mobilization in support of Operation Enduring Freedom with a report date of 28 February 2003 for a period of 365 days. The orders were amended on 09 February 2004 extending the period of active duty days from 365 to 485. On 29 April 2004, the orders were amended to reflect the period of active duty from 365 days to 605 days, 3) the applicant was released from active duty on 02 August 2004 under the provisions of Army Regulation (AR) 635-200, Chapter 4 (Separation for Expiration of Service Obligation). Her character of service was honorable with a separation code of 'LBK,' 4) on 15 November 2006, orders show the applicant was discharged from the USAR with an under other than honorable conditions discharge and reduced her rank from E-5 to E-1. Subsequent orders dated 12 December 2006 revoked the previous orders pertaining to the reduction in rank and discharge of the applicant. The available record is void of new Discharge Orders. 5) as part of her application she provided documentation showing she requested separation from the USAR due to hardship as well as memorandums from her command showing she was recommended for separation due to hardship and that she received a recommendation of a character of service as honorable. She provided medical documentation showing that her son was under medical care due to attempting suicide while the applicant was deployed in support of Operation Iraqi Freedom.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited medical records were available for review via JLV from 28 June 2005 through 27 February 2014. Her in-service medical records available for review via JLV were void of any BH diagnosis or treatment history.

d. A Commander's Report for Separation Under AR 135-178, Chapter 6-2 dated 08 June 2005 shows that the applicant's commander recommended separation under the provisions of AR 135-178, Chapter 6-2, prior to the expiration of her term of military service and that her service be characterized as honorable conditions. More specifically, the commander noted that medical professionals had recommended the applicant's son not be separated from her for extended periods of time and due to family circumstances did not believe the applicant could effectively continue her career and still provide proper care necessary for her son to fully recover and lead a normal childhood.

e. As part of her application, the applicant provided copies of her son's BH records. A note dated 02 June 2004 shows that it was reported to her son's treating provider that

he had three episodes of suicidal behavior. A subsequent note written by a Licensed Clinical Social Worker (LCSW) documented that she contacted the American Red Cross to get the applicant back from Kuwait due to her son's ongoing BH treatment needs.

f. A review of JLV shows the applicant is 10% service-connected through the VA for facial scars. She is not service-connected for any BH conditions and there were no VA medical records available for review in JLV.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during her time in service that contributed to her discharge. It is also of note that while the records show her commander recommended an honorable discharge due to hardship, the applicant's USAR characterization of service is unclear due to the last separation orders available for review rescinded previous orders reducing her rank and noting her characterization of service as under other than honorable conditions without providing any clarifying information. However, she contends that her discharge was related to Other Mental Health Issues, and, per liberal guidance, her assertion is sufficient to warrant the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends her discharge was related to Other Mental Health Issues.

(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? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical documentation supporting her assertion of Other Mental Health Issues. In absence of documentation supporting her assertion there is insufficient evidence to establish her discharge was related to Other Mental Health Issues. Furthermore, while the records show her commander recommended an honorable discharge due to hardship, the applicant's USAR characterization of service is unclear due to the last separation orders available for review rescinded previous orders reducing her rank and noting her characterization of service as under other than honorable conditions without providing any clarifying information. Given the lack of clarity regarding her discharge from the USAR, even if the applicant was diagnosed with a mitigating BH condition, a nexus could not be established between her assertion of Other Mental Health Issues and the reason for discharge. Although the available records are void of any BH diagnosis or treatment

history, she contends that her discharge was related to Other Mental Health Issues, and, per liberal guidance, her assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of information related to the misconduct leading to the applicant's record and the lack of mitigation found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a correction to the applicant's characterization of service.

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.

3/31/2025

X

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. Section 1556 of Title 10, U.S. Code, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.
  - a. Paragraph 2-9a provides that an honorable characterization of service 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.
  - b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.
4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards

are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

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

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

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

//NOTHING FOLLOWS//