

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240004111

APPLICANT REQUESTS: upgrade of her (general) under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter

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 signed the discharge papers under duress. She had plans of making a career out of the military. She was sexually abused by her captain. The day that her captain was deployed to another duty station is same day she was discharged from her duty station. This was not by coincidence. He was guilty of sexual assault. In a self-authored letter, she states:

a. She enlisted as a 72G (Automated Data Telecommunications Operator). She completed her basic training and was transferred to Fort Gordon, GA for her advanced individual training.

b. She had established some friends in her platoon. She attended night school, so she did not get to meet a lot of people. She met a girl name T.P. They had to attend night school to learn the skills and training for their Military Occupational Specialty (MOS). Her friend had informed her one day that she was dating the platoon leader. She then informed her that the captain, had interest in her. She was shocked with this information, and she was wondering why the captain had always called her out of the formation on a daily.

c. The captain would all ways call her out of formation, and it always made her feel very uncomfortable. She was terrified that he always called her out front and center in front of the whole platoon. She could not understand why. Her being a private first class, what would the captain want with little ole her.

d. She completed her training for my MOS and was considered a hold over, due to her top-secret clearance not being complete. The buddy that she went in the military with had her clearances and was being sent to Hawaii for her permanent duty station. She was assigned to due clean up duty while being a holdover.

e. One day her Captain called her out of formation and command her to hold fast after the formation. He stated that she would be his assistant during the rest of her time at Fort Gordon until her clearance came through. She does not remember her last day of schooling or how long she became the captain's sex slave.

f. He knew she was becoming depressed about not getting her clearance and going to her permanent duty station, which was fort Benning, Georgia. She knew where she was being assigned to but did not have a date to deploy. It seemed like forever. All her friends had left to go to their permanent duty stations except for her. Her captain used that to his advantage and told her that he could get her orders immediately. He told her to keep coming to his office every morning after formation and he would take care of things for her, and not to worry because he could make things happen due to him being a person of rank in the military.

g. During this time, she was at the captain's side during her working hours. She was assigned to report to his office daily with no tasks to complete. When the drill sergeants entered his office, she was commanded to get at attention. The captain would say sit down and she never had to get at attention, a private not having to follow the drills sergeant's command in front of a ranking office was embarrassing to them.

h. She was really getting depressed, and the captain made her do sexual favors to get her orders faster as he promised, and he told her she better not tell anyone, or he would have me discharged and she would never receive her top-secret clearance. Time just kept passing by and the sexual favors got worse. She does not want to go into details and relive the trauma she encountered but the sexual favors were very unpleasant for her. She does not remember the dates but the sexual abuse, continued until she was discharged.

i. The drill sergeants kept threatening her that they were going to dog her out physical and mentally once the captain got his orders to someplace else. She told the captain that the drill sergeants were going treat her so bad when he left, and he got her orders to be discharged the same day he was ordered to another duty station.

j. She signed those papers under distress which messed up her whole life. The sexual abuse led her to drug addiction, suicide attempts. She was admitted into several mental hospitals after her military experience.

k. She has not had heterosexual relationship since she was discharged from the military due to the trauma she experienced. She has seen several Psychologist in her lifetime and have never been in a relationship with a man since that experience.

l. Her life would have turned out differently if she was not taken advantage of by a man of power and lack of respect for his troops. Her captain made a career out of the military, and she could have too. She ended up with mental health issues, drug addiction, Post-Traumatic Stress Disorder, depression just to name a few. She could have travelled the world and retired through the military. She never had children due to the lack of trust of men.

3. The applicant enlisted in the Regular Army on 13 May 1986. She did not hold an MOS.

4. On 21 November 1986, her immediate commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13 for unsatisfactory performance. The specific reason for initiation is void. She acknowledged receipt the same day.

5. Having been advised be consulting counsel of the basis for the contemplated action to separate her for unsatisfactory performance under the provisions of AR 635-200, chapter 13, and its effect; of the rights available to her; and the effect of any action taken by her in waiving her rights. The applicant waived consultation with counsel. She understood that she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to her.

6. Her commander recommended that she be discharged from the Army before the expiration of her term of service under the provisions of AR 635-200, chapter 13 for unsatisfactory performance.

7. On 26 November 1986, the separation authority approved discharge with issuance of a General Discharge Certificate.

8. Accordingly, on 3 December 1986, she was discharged under honorable conditions (general) under the provisions of AR 635-200, chapter 13. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 6 months and 21 days net active service this period. It also shows:

- Item 26 (Separation Code): JHJ

- Item 27 (Reenlistment Code): 3
- Item 28 (Narrative Reason for Separation): Unsatisfactory Performance

9. There is no evidence the applicant applied to the Army Discharge Review Board within the Board's 15-years statute of limitations.

10. During the processing of this case a request was made to U.S. Army Criminal Investigation Division requesting for sanitized copies of law enforcement reports from the Department of the Army, Criminal Investigation Division. A reply was received on 28 August 2024, stating a search of the Army criminal file indexes, utilizing the information provided, revealed no CID/MP/MST records pertaining to the applicant. Be advised that records at this agency 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.

11. By regulation, AR 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her (general) under honorable conditions discharge to honorable. On her DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment are related to her request. More specifically, she asserted that she was sexually abused by her Captain (Commanding Officer). 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 Regular Army on 13 May 1986. She did not hold an MOS, 2) on 21 November 1986, her commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200, Chapter 13 for unsatisfactory performance. The specific reason for initiation is void. She was discharged on 03 December 1986 under the provisions of AR 635-200, under honorable conditions (general), with a separation code of JHJ, reenlistment code of '3,' and narrative reason for separation as unsatisfactory performance. She completed 6 months and 21 days of net active service. 3) A memorandum from the Criminal Investigation Division (CID) dated 28 August 2024

indicated there were not any CID/MP/Military Sexual Trauma (MST) records pertaining to the applicant in their criminal file indexes.

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) and Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. Review of JLV shows the applicant is 10% service-connected through the VA for Tinnitus. She is not service-connected for any BH conditions at this time though a VA Rating Decision letter dated 27 September 2024 indicated the applicant has submitted VA claims for several BH conditions (i.e., PTSD, Depression, Anxiety, and MDD) though noted the decision as deferred as of this writing. The applicant was initially referred for a BH consult through the VA on 13 March 2024. A follow-up consult on 26 March 2024 shows the applicant reported a history of MST with increased anxiety and nightmares and expressed an interest in psychotherapy. A walk-in note dated 26 March 2024 documented that the applicant was going through a lot and was in the process of submitting a disability claim for MST. A BH diagnostic assessment note dated 08 November 2024 shows that the applicant was seeking BH services due to PTSD/MST, depression, and anxiety. It was noted that the onset of her symptoms was after military service. It was documented that she engaged in individual therapy for years and also had a history of outpatient substance use disorder treatment in the 1980s for cocaine use, though noted she has been sober for 24 years. The applicant reported she was admitted to a psychiatric unit two times for suicidal behavior/attempts in the 1980s/1990s. The provider noted her initial diagnoses as PTSD, Unspecified, Major Depressive Disorder (MDD), Recurrent Episode, Severe, Anxiety Disorder, Unspecified, and Cocaine Use Disorder, In Sustained Remission. The stressor associated with her diagnosis of PTSD was identified as MST.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support that the applicant likely had a potentially mitigating condition or experience during her time in service as she reported a history of MST and has been diagnosed with PTSD by a VA provider due to MST. Although she has also been diagnosed with MDD, and Anxiety Disorder, Unspecified, it is unclear if these conditions have been associated with her military service and are otherwise subsumed by her diagnosis of PTSD and experience of MST. Although the specific circumstances that led to her discharge are unavailable for review, it is more likely than

not that her experience of MST/PTSD contributed to her unsatisfactory performance that led to her discharge. As such, BH mitigation is supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported a history of MST. She has been diagnosed with PTSD due to MST through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST. She has been diagnosed with PTSD due to MST through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review. Since being discharged from the military, the applicant has reported a history of MST, which was documented in her VA medical records. Furthermore, her diagnosis of PTSD by a VA provider was attributed to her experience of MST. Although the specific circumstances that led to her discharge are unavailable for review, it is more likely than not that her experience of MST/PTSD contributed to her unsatisfactory performance that led to her discharge. As such, BH mitigation is supported.

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. Based upon the short term of honorable service prior to the applicant's separation and the lack of clear mitigation for the justification for the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change 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.

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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, 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 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of this regulation, in effect at the time, provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue

or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

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.

3. 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.

4. 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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, 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//