

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004318

APPLICANT REQUESTS: in effect, on behalf of her late husband, a prior service member, reconsideration of his earlier request for upgrade of his undesirable discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record), 20 February 2024
- Self-authored Statement, 16 February 2024
- Application for Marriage License, Vital Records Unit, State Department of Human Resources, 1976
- Marriage License, State Department of Public Health, 1976
- Death Certificate, 23 July 2010
- State Driver's License, 2017
- letter, Army Review Boards Agency, 3 October 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180012351 on 10 July 2019.

2. The applicant indicates on her application that her late husband's post-traumatic stress disorder (PTSD), other mental health issues or conditions, and sexual assault or harassment are related to her request. She states she is requesting her late husband's characterization of service be changed to honorable in order to proceed further with her affairs. He completed the required active service.

3. The applicant provides copies of an application for a marriage license, a marriage license, death certificate, and her driver's license, which establish that she is the widow of the prior service member.

4. A review of the prior service member's available records reflect:

a. On 28 June 1973, he enlisted in the Regular Army for 3 years. He completed basic combat and Advanced Individual Training, and he was awarded military occupational specialty 91B (Medical Specialist). He attained the rank of private first class (PFC)/E-3.

b. On 13 December 1973, he was assigned to Headquarters and Headquarters Troop (HHT), 3d Squadron, 8th Cavalry, Germany.

c. Special Orders Number 30, issued by Headquarters (HQ), U.S. Army, Europe and the Seventh Army, dated 30 January 1975, reflect he was reduced to the rank of private/E-1 on 10 October 1974 as the result of nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ). His DA Form 2-1 (Personnel Qualification Record) reflects that he was absent without leave (AWOL) for 52 days from 24 July 1974 -13 September 1974, resulting in this reduction; however, the record of NJP is not in his available records.

d. On 1 March 1975, he was reported AWOL from his unit, HHT, 3d Squadron, 8th Cavalry, Germany; on 30 March 1975 he was dropped from the rolls (DFR).

e. Special Court-Martial Order Number (SCMO) 24, issued by HQ, 3D Brigade, 8th Infantry Division, reflects he was arraigned, tried, and found guilty of being AWOL from his unit HHT, 3d Squadron, 8th Cavalry, Germany from on or about 1 March 1975 - 5 June 1975. He was sentenced to confinement at hard labor for 60 days, forfeiture of \$50.00 per month for 6 months. The sentence was approved on 10 July 1975.

f. SCMO 1024, issued by U.S. Army Retraining Brigade, Fort Riley, dated 1 October 1975, suspended the unexecuted portion of his sentence to forfeiture of \$50.00 pay per month for 6 months as promulgated in SCMO Number 24, unless sooner vacated.

g. DA Forms 4187 (Personnel Action) reflect his status was changed at his unit, HQ, 93d Evacuation Hospital, Fort Leonard Wood:

- on 18 February 1976 from emergency leave to AWOL
- on 18 March 1976 from AWOL to DFR

h. On 27 May 1976, he was apprehended by military police authorities, and he was returned to military control; his status changed from DFR to present for duty.

i. His records are void of A DA Form 458 (Charge Sheet), listing the changes and specifications, if any; his request for discharge memorandum with the understanding of and election of his rights under the provisions of Chapter 10 of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel); his commander and intermediate

commander's recommendations, and the separation authority approval of a request for discharge for the good of the service in lieu of trial by court-martial.

j. His DA Form 2-1 shows the following periods of lost time:

- 24 July 1974 -13 September 1974, 2 days for AWOL
- 1 March 1975 - 4 June 1975, 96 days for AWOL
- 10 July 1975 - 27 August 1975, 49 days for imprisonment
- 18 February 1976 - 26 May 1976, for AWOL

k. Orders 32-238, issued by HQ, 101st Airborne Division, Fort Campbell, dated 16 August 1976, reflect he was discharged effective 19 August 1976 with an Undesirable Discharge Certificate.

l. On 19 August 1976, he was discharged. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10 with an under other than honorable conditions characterization of service. He completed 2 years, 4 months, and 4 days of total active service with 292 days of time lost and 34 days of excess leave. He was assigned separation program designator code KFS and reenlistment codes 3 and 3B. He was awarded the National Defense Service Medal and Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

5. On 10 July 2019, in ABCMR Docket Number AR20180012351, the Board found the overall merits of his case were insufficient as a basis to correct his records.

6. In reaching its determination, the Board can consider the applicant's petition and the prior service member's record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant, the spouse of the deceased former service member (FSM), is requesting reconsideration of her prior request to the ABCMR for an upgrade of the FSM's under other than honorable discharge to honorable. She contends in this application that the FSM experienced sexual assault/harassment and mental health conditions including PTSD that mitigates his misconduct. 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 FSM enlisted in the Regular Army on 28 June 1973; 2) The FSM received nonjudicial punishment for being AWOL from 24 July 1974 -13 September 1974; 3) The FSM was found guilty of being AWOL again from 1 March - 5 June 1975. Also, the FSM was found to be AWOL from emergency leave 18 February 1976 till 26 May 1976 when he was apprehended by military police

and returned to military control; 4) The FSM's records are void of the charge sheet listing the FSM's charges and specifications; 5) On 19 August 1976, the FSM was discharged, Chapter 10 with an under other than honorable conditions characterization of service. He completed 2 years, 4 months, and 4 days of total active service with 292 days of time lost and 34 days of excess leave; 6) On 10 July 2019, the ABCMR Board found the overall merits of the FSM's case were insufficient as a basis to correct his records.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the FSM's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts the FSM was experienced sexual assault/harassment and mental health conditions including PTSD while on active service, which mitigates his misconduct. The applicant did not report details on the nature or history of these experiences or conditions for the FSM. There is insufficient evidence the FSM reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV was void of medial documentation for the FSM, and no additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the FSM had a mental health condition including PTSD that mitigates his misconduct. In addition, there is insufficient evidence surrounding the charges which resulted in the FSM's under other than honorable discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience. However, the applicant's contention the FSM experienced sexual assault/harassment alone is sufficient for the board's consideration, per Liberal Consideration

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced sexual harassment/assault and mental health conditions including PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced sexual harassment/assault and mental health conditions including PTSD which mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition including PTSD, while he was on active service. The applicant noted on the application the FSM experienced sexual assault/harassment, but she did not provide additional information on nature of this experience in relation to the FSM's misconduct. In addition, there is insufficient evidence surrounding the charges which resulted in the applicant's undesirable discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience. The FSM did repeatedly go AWOL during his active service, which could be avoidant behavior, but the presence of misconduct is not sufficient evidence of the presence of a mental health condition or sexual experience. Yet, the applicant contends the FSM was experiencing a mental health condition and an experience that mitigates his misconduct, and per Liberal Consideration her contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

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 carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The SM's separation packet is not available for review. However, other evidence shows the SM was charged with commission of an offense (or offenses) punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the SM's available separation processing.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination that there is insufficient evidence to support the SM had a mental health condition including PTSD that mitigates his misconduct. Moreover, there is insufficient evidence surrounding the charges which resulted in the SM's under other than honorable discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience. In addition, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of the SM's clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the SM received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AR20180012351 on 10 July 2019.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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.

a. Chapter 3-7 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses

- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "Conduct Triable by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

4. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

7. 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//