

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240004402

APPLICANT REQUESTS: an upgrade of her characterization of service from uncharacterized to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 was a victim of Military Sexual Trauma (MST), sexual assault/harassment, post-traumatic stress disorder (PTSD), anxiety, obsessive compulsive disorder (OCD), depression, insomnia, bipolar disorder, and memory loss.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 21 June 1996.
 - b. On 21 November 1996, she was counseled by her noncommissioned officer (NCO) for sociological problems and her failure to adapt/conform to military requirements. Her NCO stated that following her father's stroke she elected to seek a discharge for hardship conditions but failed to provide the necessary legal papers to determine the custody of her three children, which were under her father's care. The lack of legal documentation led to the failure of her request for a hardship discharge. He informed her that her reluctance to provide the information had an effect on her family situation and was keeping her from training and would continue to do so. Accordingly, she was being recommended for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 11. He also informed her that her inability to provide legal documentation and proper care for her children made continued service almost impossible. The applicant concurred with the counseling.

c. On the same date, she was counseled by her first sergeant (1SG) regarding her repeated and failed attempts to get the proper documentation for a hardship discharge. He stated that she continued to have severe childcare problems, and legal custody had not been resolved. He indicated that continued service under those conditions would be counterproductive, and he was recommending she be discharged under the provisions of AR 635-200, chapter 11, for failure to adapt to military life.

d. The applicant's immediate commander counseled her and informed her that he was recommending that she be discharged under the provisions of AR 635-200, chapter 11, for sociological problems. Her commander stated that she had failed to adapt to military life by inadequately providing for the care of her dependent children. She had not been able to train, and the situation would continue to be a problem. He stated that her request for a hardship discharge failed because of her inability to provide proof of custody of her children.

e. On the same date, the applicant's immediate commander notified her of his intent to initiate separation action under the provisions of AR 635-200, chapter 11, for inability to adjust to military life. Her commander noted the specific reasons for his proposed action: her inability to provide the necessary legal documentation needed for her request for discharge under hardship conditions, coupled with her inability to provide a proper dependent care plan, made continued service impossible. The commander informed her that he was recommending she receive an uncharacterized, entry level separation and explained her rights. The applicant waived all her rights, to include the opportunity to consult with counsel.

f. The applicant underwent a mental status evaluation for the purpose of discharge on 22 November 1996. The Mental Health Specialist noted the applicant was experiencing adjustment disorder with anxiety and did not possess the necessary coping skills to become a productive member of the U.S. Army. Her main focus at the time was her children, and with that in mind, she may be a danger to herself and those around her due to her lack of concentration. The Mental Health Specialist also noted that the applicant had some long-term issues that could not be resolved by giving her leave to resolve them, and she would continue to be a problem for the command as long as she remained in the service. He recommended a discharge from service due to a failure to adapt.

g. Her immediate commander formally initiated separation under the provisions of AR 635-200, chapter 11. He noted that he did not consider any other disposition feasible or appropriate because the applicant had no approved way to provide care for her three children if she continued in the service. She was unable to begin training because of her situation.

h. On 26 November 1996, the separation authority approved the recommended discharge under provisions of AR 635-200, chapter 11, and directed she receive an uncharacterized, entry-level discharge.

i. The applicant was discharged on 4 December 1996. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 11, by reason of entry level performance and conduct, in the rank/grade of PV2/E-2. This form also shows in:

- Item 11 (Primary Specialty): 77F, Petroleum Supply, 0 years, 0 months
- Item 12c (Net Active Service This Period): 5 months and 14 days
- Item 24 (Character of Service): Uncharacterized
- Item 26 (Separation Code): JGA
- Item 27 (Reentry Code): 3

4. On 2 October 2003, the ABCMR considered the applicant's request to change her narrative reason for separation, RE Code, and Separation Code to reflect that she was discharged for hardship reasons, in ABCMR Docket Number 2003087825. The Board denied the applicant's request and noted she failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

5. On 21 August 2024, the Department of the Army, Criminal Investigation Division, provided a response and stated a search of the Army criminal file indexes, revealed no Sexual Assault and Domestic Violence records pertaining to the applicant.

6. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within that Board's 15-year statute of limitations.

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

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her characterization of service from uncharacterized to honorable.

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 21 June 1996.
- On 21 November 1996, she was counseled by her noncommissioned officer (NCO) for sociological problems and her failure to adapt/conform to military requirements. Her NCO stated that following her father's stroke she elected to

seek a discharge for hardship conditions but failed to provide the necessary legal papers to determine the custody of her three children, which were under her father's care. The lack of legal documentation led to the failure of her request for a hardship discharge. He informed her that her reluctance to provide the information had an effect on her family situation and was keeping her from training and would continue to do so. Accordingly, she was being recommended for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 11. He also informed her that her inability to provide legal documentation and proper care for her children made continued service almost impossible. The applicant concurred with the counseling.

- The applicant's immediate commander counseled her and informed her that he was recommending she be discharged under the provisions of AR 635-200, chapter 11, for sociological problems. Her commander stated she had failed to adapt to military life by inadequately providing for the care of her dependent children. She had not been able to train, and the situation would continue to be a problem. He stated that her request for a hardship discharge failed because of her inability to provide proof of custody of her children.
- On the same date, the applicant's immediate commander notified her of his intent to initiate separation action under the provisions of AR 635-200, chapter 11, for inability to adjust to military life. Her commander noted the specific reasons for his proposed action: her inability to provide the necessary legal documentation needed for her request for discharge under hardship conditions, coupled with her inability to provide a proper dependent care plan, made continued service impossible. The commander informed her that he was recommending she receive an uncharacterized, entry level separation and explained her rights. The applicant waived all her rights, to include the opportunity to consult with counsel.
- The applicant was discharged on 4 December 1996. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 11, by reason of entry level performance and conduct, in the rank/grade of PV2/E-2. Her service was uncharacterized, with separation code JGA, and reentry code RE-3.
- On 2 October 2003, the ABCMR considered the applicant's request to change her narrative reason for separation, RE Code, and Separation Code to reflect that she was discharged for hardship reasons, in ABCMR Docket Number 2003087825. The Board denied the applicant's request and noted she failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.
- On 21 August 2024, the Department of the Army, Criminal Investigation Division, provided a response and stated a search of the Army criminal file indexes, revealed no Sexual Assault and Domestic Violence records pertaining to the applicant.

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 a victim of Military Sexual Trauma (MST) and sexual assault/harassment. She suffers from post-traumatic stress disorder (PTSD), anxiety, obsessive compulsive disorder (OCD), depression, insomnia, bipolar disorder, and memory loss."

d. Due to the period of service no active-duty electronic medical records were available for review. However, she submitted a mental status evaluation for the purpose of discharge, dated 22 November 1996. The evaluation indicates she was a divorced mother of three children. The children were living with her father while she was in training, however, the father suffered a stroke, and the children were under the care of several different individuals. The applicant was extremely concerned about her children, and the future. The evaluation further indicated the applicant had not had a job prior to military service, since she was a housewife, however, with the divorce she had to make major changes in her life. The diagnostic impression noted the applicant was experiencing Adjustment Disorder with Anxiety. The clinician opined the applicant did not possess the necessary coping skills to become a productive member of the U.S. Army. "Her focus was her children, and with that in mind, she may be a danger to herself and those around her, due to her lack of concentration." The applicant "had some long-term issues that could not be resolved by giving her leave to resolve them, and she would continue to be a problem for the command as long as she remained in the service." The evaluation recommended discharge from service due to a failure to adapt.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 80% service connected, including 70% for PTSD. The applicant initiated behavioral health services with the VA on 19 April 2023, she was referred by her medical provider for a psychiatric evaluation related to issues with insomnia. The evaluation indicates the applicant declined psychotherapy since she indicated it was against her religion but was interested in medication to address her insomnia. The evaluation further noted her history of PTSD and MST, along with no prior mental health treatment, as well as "homelessness for some time, sleeping in her car mostly until her car was repossessed. She has been moving around, sometimes staying with family." She was prescribed medication but did not follow-up on services and the record shows she was next seen by psychiatry on 31 October 2023. She was diagnosed with PTSD, Major Depressive Disorder, Anxiety Disorder, and Insomnia. In addition, the note indicates the applicant presented with mood instability and some paranoia. A mental health note dated 20 May 2024, states the applicant reported her 22-year-old daughter was murdered on 7 April 2024 and she was coping with the unexpected loss of her daughter. She described how her thoughts were dominated by the loss. She reported this was the second child she had to bury. Overall, the record shows the applicant's inconsistent participation in 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 discharge.

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 and, in addition, selected PTSD and OMH on her application as related to her request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST and was diagnosed with Adjustment Disorder with Anxiety while in military service. In addition, the applicant was a single parent with three children following her divorce. Her father, the primary caregiver for her children, suffered a stroke and there was no clear individual who could care for her children. She requested discharge due to hardship conditions but was denied, since she failed to provide the necessary legal papers determining the custody of her three children. The lack of legal documentation led to the failure of her request for a hardship discharge. However, the applicant was unable to identify an individual to take custody of her children which was the reason her request for a hardship discharge was urgently needed.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to sociological problems and her failure to adapt/conform to military requirements or inability to adjust to military life. She asserts the mitigating experience of MST, as well as the loss of her custodial childcare provider, due to her father suffering a stroke. It is more likely than not that, if the applicant had not suffered MST during military service along with the loss of her primary childcare provider, she would have been able to successfully complete her term of military service.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. The evidence shows the applicant failed to adapt to military life by inadequately providing for the care of her dependent children. She had not been able to train, and the situation would continue to be a problem. As a result, she was separated with an uncharacterized discharge after completing 5 months and 14 days of active service. The Board reviewed and agreed with the medical reviewer's determination that there is sufficient evidence to

support the applicant had an experience of MST, and a subsequent BH condition that mitigates her discharge. Based on this mitigation, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade also changes the underlying reason for separation and corresponding codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 4 December 1996 as follows:

- Item 24 (Character of Service) Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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 (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. It stated:

a. 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.

b. Chapter 11 provided guidance for the separation of personnel because of unsatisfactory performance, or conduct (or both) while in an entry level status. Chapter 11-3 applied to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve, and in an entry level status and, before the date of the initiation of separation actions, had completed no more than 180 days of creditable continuous active duty or initial active-duty training; and demonstrated they could not or would not adapt socially or emotionally to military life.

c. Paragraph 11-8 stated service would be described as uncharacterized under the provisions of chapter 11.

d. Entry-level status is defined as: for Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

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 JGA corresponded to the narrative reason entry level performance and conduct and the authority Army Regulation 635-200, chapter 11, and corresponded to an entry level type separation.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the

Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. Section 1556 of Title 10, United States 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//