

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240004858

APPLICANT REQUESTS:

- upgrade of her under honorable conditions (general) discharge
- restoration of her rank/grade to private/E-2
- recoupment of missed pay and entitlements
- removal of all derogatory information from her service records

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) summary of benefits letter
- In-service documents
- Character reference letters (3)

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 abused, raped, and let down by the people who were supposed to protect her. They did not help nor were they concerned about her. They judged her because of the way she acted out. She wanted to get away from it all.
3. On 29 September 2004, the applicant enlisted in the Regular Army for 3 years and 25 weeks in pay grade E-2.
4. The applicant received formal counseling on 30 April 2005 for lying to a noncommissioned officer and for failing an overweight test on and 2 May 2005.
5. On 31 May 2005, the applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for stealing a credit card from another Soldier, on or about 30 April 2005, and falsely making the signature of another Soldier at a restaurant,

on or about 30 April 2005. Her punishment included reduction to E-1, forfeiture of \$288.00 pay per month, and 14 days extra duty and restriction.

6. The applicant's commander notified her on 20 June 2005, that she was initiating actions to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5, paragraph 5-17, because of other designated physical or mental condition not amounting to disability. She noted the applicant's diagnosis of an adjustment disorder with depressed mood. In addition, the applicant stole another Soldier's credit card and forged the Soldier's signature, with intend to defraud.

7. The applicant's commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-17.

8. On 21 June 2005, the applicant acknowledged that she had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to her. She declined to submit a statement in her own behalf. She indicated she understood she could expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to her.

9. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 6 July 2005, with her service characterized as under honorable conditions (general).

10. The applicant was discharged on 15 July 2005. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 5-17, for physical condition, not a disability. She was discharged in the lowest enlisted grade and her service was characterized as under honorable conditions (general). She completed 9 months and 17 days of net active service this period.

11. The applicant provides:

a. VA documents that show she has an 100% evaluation for service-connected disabilities.

b. Three character reference letters that collectively attest to the sexual harassment she experienced while in the Army, and the impact of these events to her mental health.

12. In the processing of this case, a search of the Criminal Investigation Division database was requested for sanitized copies of a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no sexual assault investigation pertaining to the applicant.

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

14. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under honorable conditions (general) to honorable. She contends she experienced sexual assault (MST) and an undiagnosed mental health condition, PTSD that mitigates her misconduct.

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 29 Sep 2004.
- Applicant was formally counseled on 30 Apr 2005 for lying to an NCO and failing an overweight test on 2 May 2005.
- The applicant received NJP for stealing a credit card and making the signature of another soldier on or about 30 Apr 2005. She was subsequently charged with stealing the credit card and forging the signature of another soldier. Her commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 5, paragraph 5-17.
- The applicant was discharged on 15 July 2005, and she was credited with 9 months and 17 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts mitigation is appropriate because she was "abused and raped and let down by own people" who were supposed to protect her instead of judging her for "acting out" in order to escape further abuse. A memorandum with subject, "Separation Under AR 635-200, Chapter 5, Paragraph 5-17," showed the applicant was being separated because of other designated physical or mental condition not amounting to a disability, and a diagnosis of Adjustment Disorder with Depressed Mood was indicated. A portion of a psychiatric evaluation was available for review. It indicated the service member's BH difficulties did not meet the criteria for a medical evaluation board despite unsuitability for retention as a result of a chronic adjustment disorder. The forensic psychiatrist declined to assume responsibility for "soldier's ongoing maladaptive and dangerous behavior" should his medical advice be disregarded. His expectation was that SM's behavior would worsen over time. A Veteran's Affairs letter (19 Apr 2023) indicated that she had a combined service-connected disability at 100%. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was also reviewed and demonstrated a history of mental health related treatment or diagnoses. Applicant was awarded a service-connected disability of 100% with 70% for PTSD. The first behavioral health entry (20 Nov 2017) indicated applicant's struggle with behavioral health issues, homelessness, sleeping in her vehicle and two children staying with family members. Documentation from 24 Sep 2020 showed she presented to the ER with increased intrusive memories of sexual assault/rape and depression secondary to completing VA claims forms, and she reported while in the military, she was raped twice by a superior and threatened with retaliation if she told anyone. She was assessed to have suicidal ideation and diagnosed with major depression. This led to an admission to the VA psychiatric unit for more intensive BH treatment. Applicant related in an intake evaluation on 18 Feb 2021 having symptoms of anxiety, depression and PTSD that was fostered by sexual trauma in the military. She requested a session with a psychiatrist to restart medications. She was diagnosed with PTSD, Major Depressive Disorder, Recurrent, Severe and Panic Disorder. On 29 Oct 2021, applicant revealed increased PTSD symptoms from the military, but never received any therapy. She also acknowledged a suicide attempt in 2018 or 2019. She reported strong suicidal ideation on 13 Nov 2022. She also had auditory and visual hallucinations. She noted becoming more depressed when she submitted the claim for her MST due to memories of the assault/rape in the military and recalled being threatened with retaliation if she ever told anyone. She recalled previous psychiatric medications for mood, sleep and anxiety and was restarted on three psychiatric medications. On 28 Nov 2022, the applicant reported feeling better after her recent discharge from the Ashville VAMC hospital. A social worker encouraged applicant to consider MST-related group therapy (7 Mar 2023), but applicant rejected this in favor of individual therapy. A Compensation and Pension examination was conducted (30 Mar 2023), which further confirmed a PTSD diagnosis. Issues of quasi-homelessness, suicidal ideation and periodic crises seemed most pronounced psychologically up to the last entry on 24 Oct 2023.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support that the applicant had a condition or experience, PTSD resulting from MST, that partially mitigates her misconduct. Specifically, the failure of a weight test can be mitigated. As there is an association between PTSD and substandard performance, there is a nexus between this condition and her failed weight test. However, lying to an NCO and stealing/forging signatures on credit cards are not associated with PTSD and therefore cannot be mitigated.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had a mental health condition, PTSD from

MST at the time of the misconduct. She was diagnosed with an Adjustment Disorder with Depressed Mood during her time in service, and she is 70% service connected through the VA for PTSD resulting from MST.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed the applicant was diagnosed with an Adjustment Disorder while on active service and she has been service connected and treated for PTSD by the VA. The applicant asserts a fully mitigating behavioral health experience, MST, and there is an association between MST and disregard for military standards, such as failing a weight test. However, there is no nexus between PTSD and misconduct related to stealing/forging signatures on credit cards. This type of misconduct is not part of the natural history or sequela of a mental health condition, and PTSD/MST does not affect one's ability to distinguish right from wrong and act in accordance with the right. The applicant contends she had an MST and was experiencing a mental health condition that mitigates her misconduct, and per Liberal Consideration her assertion of MST alone is sufficient for the board's consideration.

#### 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 misconduct leading to the applicant's separation including stealing from other Soldiers and the findings outlined in the medical review stating that misconduct is not mitigated by the MST, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service or all other requested relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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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 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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

b. 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.

c. Paragraph 5-17 (other designated physical or mental conditions) established policy and prescribed procedures for separating members on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13 that potentially interfere with assignment to or performance of duty.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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 Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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 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.

6. 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//