

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004899

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of her under honorable conditions (general) discharge to honorable
- a change in her narrative reason for separation and corresponding separation code
- a change in her reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veteran Affairs (VA) Compensation Letter, 13 March 2024
- VA Disability Letter, 24 October 2024

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 received a general under honorable conditions discharge with separation code is JHJ for unsatisfactory performance. The re-entry code is listed as 3, which means she is not considered fully qualified for reentry or continuous service at the time of separation. She has been diagnosed with migraine headaches, which are debilitating. The migraines were aggravated by the sexual advances of the male drill sergeant. Her life has not been the same since. The calls from the drill sergeant to the hospital inviting her to his home caused her trauma. She has been denied employment as a result of the discharge status, narrative reason for separation with separation code, and her reentry code. The applicant marked "sexual assault/harassment," on her DD Form 149 as conditions related to her request.

3. The applicant provides:

- a. A VA letter dated 13 March 2024 which certifies she is receiving 50% service connected disability effective 1 December 2023.
- b. A VA letter dated 24 October 2024, shows the applicant is receiving service-connected disability compensation with a 50% combined rating for migraine headaches.

4. A review of the applicant's service record shows:

- a. She enlisted in the U.S. Regular Army on 13 April 1999.
- b. The available service record includes eight DA Forms 4856 (General Counseling Form) showing she received the following adverse counselings:
  - on 12, 17, 24 August 1999, and 2 September 1999, she was counseled for failing her Army physical fitness test (APFT)
  - on 23 October 1999, she was counseled for disobeying a lawful order, failure to follow an order or regulation, disrespect towards a noncommissioned officer (NCO), and failure to emulate the Army Core Values
  - on 31 October 1999, disobeying a lawful order from an NCO
  - on 5 November 1999, she was counseled for apathetic attitude toward physical training, failure to emulate the Army Core Values, dereliction of duty, malingering, spending too much time on sick call and in the self-care unit
- c. A Standard Form 93 (Report of Medical History) completed on 12 November 1999, shows in item 25 (Physicians summary and elaboration) migraines, dizziness and anemia.
- d. A report of Mental Status Evaluation, completed on 15 November 1999, shows in part, the applicant's clinical diagnostic impression as adjustment disorder, deferred, and migraines. The applicant was evaluated and psychiatrically cleared for any administrative action deemed necessary by her command.
- e. A Standard Form 88 (Report of Medical Examination) completed on 19 November 1999, shows in item 43 (Summary of Defects and Diagnosis) – migraine and iron deficiency.
- f. On 23 November 1999, the applicant's immediate commander notified her of her intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance. Her commander's rationale for the proposed action was due to the applicant receiving several adverse counselings, failed APFT, malingering,

disobeying a lawful order from an NCO, failure to obey an order or regulation, disrespect to an NCO and failure to emulate the Army Core Values, apathy towards physical fitness, and dereliction of duty.

g. On 9 December 1999, after consultation with legal counsel, she acknowledged:

- the rights available to her and the effect of waiving said rights
- she may encounter substantial prejudice in civilian life if a discharge under honorable conditions is issued to her
- she may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- she may apply to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading
- she is ineligible to apply for enlistment in the Army for 2 years after discharge

h. On 11 December 1999, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended that her period of service be characterized as general, under honorable conditions.

i. On 13 December 1999, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. She would be issued a general, under honorable conditions characterization of service.

j. On 22 December 1999 she was discharged with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 8 months and 10 days of active service with no lost time. She was assigned separation code JHJ and the narrative reason for separation listed as “Unsatisfactory Performance,” with reentry code 3.

5. On 19 November 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant’s claims regarding sexual assault and no records were found.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions

as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

8. By regulation (AR 635-5-1), enlisted Soldiers receive separation codes in accordance with the guidelines published for separations per Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JHJ is listed with the narrative reason “Unsatisfactory Performance,” under regulatory authority AR 635-200, chapter 13.

9. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

10. 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.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under honorable conditions (general) discharge to honorable, a change in her narrative reason for separation and corresponding separation code, and a change in her reentry code. She contends sexual harassment as related to her request.

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 13 April 1999.
- The available service record includes eight DA Forms 4856 (General Counseling Form) showing she received the following adverse counseling:
- on 12, 17, 24 August 1999, and 2 September 1999, she was counseled for failing her Army physical fitness test (APFT)
- on 23 October 1999, she was counseled for disobeying a lawful order, failure to follow an order or regulation, disrespect towards a noncommissioned officer (NCO), and failure to emulate the Army Core Values
- on 31 October 1999, disobeying a lawful order from an NCO
- on 5 November 1999, she was counseled for apathetic attitude toward physical training, failure to emulate the Army Core Values, dereliction of duty, malingering, spending too much time on sick call and in the self-care unit

- On 23 November 1999, the applicant's immediate commander notified her of her intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance. Her commander's rationale for the proposed action was due to the applicant receiving several adverse counseling, failed APFT, malingering, disobeying a lawful order from an NCO, failure to obey an order or regulation, disrespect to an NCO and failure to emulate the Army Core Values, apathy towards physical fitness, and dereliction of duty.
- Applicant was discharged on 22 December 1999 with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 8 months and 10 days of active service with no lost time. She was assigned separation code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reentry code 3.

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 received a general under honorable conditions discharge with separation code is JHJ for unsatisfactory performance. The re-entry code is listed as 3, which means she is not considered fully qualified for reentry or continuous service at the time of separation. She has been diagnosed with migraine headaches, which are debilitating. The migraines were aggravated by the sexual advances of the male drill sergeant. Her life has not been the same since. The calls from the drill sergeant to the hospital inviting her to his home caused her trauma. She has been denied employment as a result of the discharge status, narrative reason for separation with separation code, and her reentry code.

d. Active-duty electronic medical records available for review show the applicant underwent a CT scan of the brain on 5 November 1999 due to constant headaches, the results evidenced "normal intracranial anatomy". The available medical record shows frequent medical encounters without significant findings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 50% service connected for migraine headaches but is not service connected for any behavioral health condition. The applicant has an extensive medical history but limited behavioral health encounters. On 11 January 2016, she was walked to behavioral health by her primary care provider for an unscheduled assessment due to her recurring physical complaints, there were no clinical findings/diagnosis. The applicant stated, "she keeps being referred to mental health, but that there is nothing wrong with her". On 20 December 2016 and 10 January 2017, the applicant was provided with a short episode of supportive psychotherapy due to her strained relationship and pending divorce. On 16 October 2024, the applicant participated in a health psychology intake assessment to support her with her symptoms of dizziness. There is no evidence she participated in

follow-up appointments. None of the above behavioral health encounters reference the applicant reporting a history of MST/sexual harassment.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that based on the applicant's self-report there is sufficient evidence to support the applicant had an experience of sexual harassment/MST.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing sexual harassment/MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts experiencing MST while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Despite her extensive medical history, there is no evidence in the available medical record of the applicant reporting or sharing a history of MST/sexual harassment. The applicant is 50% service connected for migraine headaches but is not service connected for any behavioral health condition. However, she reports being sexually harassed by her drill sergeant. Given the association between MST and difficulty with authority, her disobeying a lawful order from an NCO, failure to obey an order or regulation, and disrespect to an NCO would be mitigated by her experience of MST. In addition, given the association between MST and work performance difficulties, her failure to emulate the Army Core Values, apathy towards physical fitness, and dereliction of duty would also be mitigated by her experience of MST. While in-service, the applicant reports experiencing MST in the form of sexual harassment that impacted her behavior as a soldier. If the Board decides to grant the applicant relief, it is recommended her reentry code remain unchanged since the applicant is service-connected and, per her statement, suffers from debilitating migraine headaches.

#### 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/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed and the justification given by the implementing commander 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 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

3. Army Regulation 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JHJ is listed with the narrative reason "Unsatisfactory Performance," under regulatory authority AR 635-200, chapter 13.

5. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel.

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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.



6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

7. 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, traumatic brain injury, sexual assault, or sexual harassment. 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

8. 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.

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 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.

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.

9. 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//