

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005339

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions character of service 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 sexually assaulted and then immediately discharged. She has been struggling with her mental health and has had a stroke.
3. On 12 May 2003, the applicant enlisted in the United States Army Reserve Delayed Entry/Enlistment Program. On 19 August 2003, she was discharged from the Delayed Entry/Enlistment Program and enlisted in the Regular Army for a period of 3 years. She completed Basic Combat Training at Fort Jackson, SC, and she was assigned to Fort Leonard Wood, MO, for Advanced Individual Training. She did not complete Advanced Individual Training and she was not awarded a military occupational specialty. The highest rank/grade she held was private 2/E-2.
4. A DD Form 458 (Charge Sheet) shows the applicant was charged with being absent without leave (AWOL) from her unit at Fort Leonard Wood, MO, from on or about 8 March 2004 until on or about 10 August 2004 and again from the Personnel Control Facility at Fort Sill, OK, from on or about 12 August 2004 until on or about 6 September 2005.
5. A memorandum, subject: AWOL/Deserter Returnee Interview Report, 8 September 2005, shows the applicant informed the interviewer that the reason she went AWOL

was "I was in a discharge unit. I was going to hurt someone." The interviewer recommended discharge under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) and noted the applicant "provided no excuse for AWOL and has a hostile temperament."

6. On 9 September 2005, after consulting with counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial under the provisions of AR 635-200, chapter 10. In her request she acknowledged:

- Charges had been preferred against her, each of which authorizes the imposition of a bad conduct or dishonorable discharge
- She was making the request of her own free will and had not been subjected to any coercion whatsoever by any person
- If her request was accepted she may be discharged under conditions other than honorable and would be deprived of many or all Army benefits and may be ineligible for many or all benefits administered by the Veterans Administration and may be deprived of her rights and privileges as a Veteran under both Federal and State law
- She may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge
- She did not intend to submit statements in her own behalf with this request
- She did not desire a physical evaluation prior to separation

7. A DA Form 4187 (Personnel Action), 15 September 2005, shows her duty status changed from dropped from unit rolls to present for duty/returned to military control effective 6 September 2005. The form shows her return to military control resulted from her apprehension by civilian authorities.

8. On 26 October 2005, the applicant's commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial, noting that she had been AWOL for two periods totaling 545 days. Her commander noted the applicant had become disillusioned with the military and her retention was not in the best interest of the Army. Her commander recommended her service be characterized as under other than honorable conditions. The intermediate commander concurred with the recommendation. A legal review found no legal objections to further processing the action.

9. On 22 November 2005, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and directed her service be characterized as under other than honorable conditions with reduction to the lowest enlisted grade.

10. On 21 December 2005, she was discharged in the lowest enlisted pay grade with service characterized as under other than honorable conditions. Her DD Form 214

(Certificate of Release or Discharge from Active Duty) shows the authority for her separation was AR 635-200, chapter 10, and the reason for her discharge was "in lieu of trial by court-martial." She completed 10 months and 5 days of net active service with time lost as noted on the Charge Sheet described above. She did not receive any individual awards for achievement or service.

11. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, she consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions character of service to honorable. She contends she experienced military sexual trauma (MST) that mitigates her 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 applicant enlisted in the Regular Army on 19 August 2003; 2) The applicant was charged with being AWOL from 8 March-10 August 2004 and again from the Personnel Control Facility at Fort Sill, OK from 12 August 2004-6 September 2005; 3) The applicant was discharged on 21 December 2005, Chapter 10- In lieu of trail by court-martial. Her service was characterized as under other than honorable conditions.

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

c. The applicant asserts she experienced MST while on active service, which mitigates her misconduct. There is insufficient evidence the applicant reported MST or any resultant mental health condition while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2013 for assistance for homelessness and transition from her recent incarceration for assault. There is insufficient evidence she reported or was diagnosed with a mental health condition by the VA. She currently does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that per Liberal Consideration, the applicant’s assertion of experiencing MST is sufficient for the Board’s consideration for mitigation of her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported experiencing MST during her active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported experiencing MST during her active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, the applicant reported experiencing MST during her active service. The applicant did go AWOL on more than one occasion, which could be avoidant behavior and a natural sequelae to MST. Per Liberal Consideration, the applicant’s assertion of MST is sufficient for the Board’s consideration for mitigation of her misconduct.

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 was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the medical advisor’s finding of insufficient evidence the applicant reported or was diagnosed with a mental health condition related to an MST event, as well as the short term of honorable service completed prior to the AWOL leading to the applicant’s separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the characterization of service.

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.

//SIGNED//
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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. Army Regulation 635-200 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. 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/NR) 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, 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.

//NOTHING FOLLOWS//