

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2024

DOCKET NUMBER: AR20240005480

APPLICANT REQUESTS: her uncharacterized service be changed to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Various Veterans Affairs (VA) documents

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 is a victim of military sexual trauma (MST). She is 100 percent (%) permanent and totally disabled for post-traumatic stress disorder (PTSD). She was assaulted and raped by someone while she was at basic training. The assault led to health complications that made it so she couldn't complete her military obligated time.
3. On 3 January 1989, the applicant enlisted in the Regular Army for 6 years. Her service record shows she neither completed training nor was awarded a military occupational specialty.
4. On 6 March 1989, the applicant voluntarily declined a separation medical examination.
5. The available record is void of a complete separation packet containing the specific facts and circumstances surrounding her discharge processing. However, by memorandum dated 7 March 1989, the applicant's commander recommended her medical discharge from the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). The commander noted that the applicant

was being discharged because she suffered from lower quadrant pain diagnosed as pelvic inflammatory disease and she had a medical profile prohibiting her from training.

6. The applicant was discharged on 13 March 1989. Her DD Form 214 confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of not meeting procurement medical fitness standards – no disability. Her service was uncharacterized. She completed 2 months and 11 days of net active service.

7. In the processing of the applicant's previous case, a search of the U.S. Army Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

8. The applicant provides VA documents that show she has a combined service-connected evaluation of 100% for various injuries and illnesses, including PTSD.

9. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

10. The Board should consider the applicant's statement in accordance with the published guidance.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her uncharacterized discharge to honorable. She contends she experienced military sexual trauma (MST) and resultant PTSD that mitigates her discharge. 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 Regular Army on 3 January 1989; 2) The available record is void of a complete separation packet containing the specific facts and circumstances surrounding her discharge processing. However, on 7 March 1989, the applicant's commander recommended her medical discharge from the service. The commander noted that the applicant was being discharged because she suffered from lower quadrant pain, diagnosed as pelvic inflammatory disease, and she had a medical profile prohibiting her from training; 3) The applicant was discharged on 13 March 1989, Chapter 5-11, by reason of not meeting procurement medical fitness standards – no disability. Her service was uncharacterized. She completed 2 months and 11 days of net active service.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA medical documentation provided by the applicant were also examined.

c. The applicant asserts she was exposed to MST and experienced PTSD while on active service, which mitigates her discharge. There is insufficient evidence the applicant reported any mental health symptoms or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant underwent a Compensation and Pension Evaluation for PTSD in April 2022. The applicant reported being sexually assaulted by a Captain while at basic training. She was diagnosed with service-connected PTSD as a result (100% SC).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her discharge. She has been diagnosed with service-connected PTSD related to her report of MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her discharge. She has been diagnosed with service-connected PTSD related to her report of MST by the VA.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was exposed to MST and resultant PTSD, which was determined to be service connected by the VA. The applicant may have been able to complete her initial training and enlistment, if not exposed to a traumatic experience and resultant mental health condition. Therefore, per Liberal Consideration, the applicant's discharge is mitigable.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board considered the applicant's statement, her record of service, and the reason for her separation. The Board considered the applicant's MST and PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor.
2. A majority of the Board concurred with the conclusion of the medical advising official regarding there being mitigating circumstances in this case but noted that the applicant was an entry level Soldier, and her service was uncharacterized in accordance with the governing regulation. As noted above in this record of proceedings, an uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise. Based on a preponderance of the evidence, a majority of the Board determined the applicant's uncharacterized service was not in error or unjust.
3. The member in the minority found the mitigating circumstances in this case sufficient to warrant relief. The member in the minority determined the applicant's character of service should be changed to honorable.

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.



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 – Enlisted Personnel) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. The version in effect at the time provided that:
 - a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-9 provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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 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 misconduct that led to the discharge.

//NOTHING FOLLOWS//