

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240005489

APPLICANT REQUESTS:

- an upgrade of her under honorable conditions (general) character of service
- her rank/grade restored to private first class/E-3
- all derogatory information expunged from her service record
- and reinstatement of her Montgomery GI Bill (MGIB) benefits

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

- DD Form 149 (Application for Correction of Military Record)
- letter, Department of Veterans Affairs (VA), dated 22 April 2020
- memorandum, VA, dated 9 February 2021
- Employee of the Week Interview
- VA Performance Appraisal, dated 30 September 2022
- letters of recommendation (2)
- VA Rating Decision, dated 30 January 2023
- statements of support (3), dated 22 May 2023 to 14 August 2023

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 while deployed to Riyadh, Saudi Arabia. Her chain of command began a series of retaliatory disciplinary write-ups after she filed a report and applied for emergency reassignment. She did not receive mental health assistance and was ostracized by her unit. The sexual assault and mistreatment led her to end her career. Her general discharge prevented her from using her MGIB, causing financial and emotional hardships. She is diagnosed with post-traumatic stress disorder (PTSD)/military sexual trauma (MST) with anxiety and depressive episodes.

3. The applicant enlisted in the Regular Army on 31 July 1997.

4. The applicant's immediate commander notified the applicant on 29 September 1999 of his intent to initiate action to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2, by reason of unsatisfactory performance. The commander noted the applicant violated two general orders and was considered absent without leave (AWOL), which resulted in a field grade Article 15 (not available for review). She received numerous negative counselings involving failure to be at her appointed place of duty and bouncing checks.

5. The applicant consulted counsel on 6 October 1999. She was advised of the basis for the contemplated separation action, and its effects; of the rights available to her; and the effect of any action taken by her to waive her rights. In an attached statement, the applicant requested retention on active duty or an honorable discharge. She stated she made it a goal not to be late for formation again.

6. The applicant's immediate commander formally recommended her separation, prior to her expiration term of service, with an under honorable conditions (general) character of service.

7. On 26 October 1999, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirements, and directed the issuance of a General Discharge Certificate.

8. The applicant was discharged, on 8 November 1999, in the grade of E-2, under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. Her service was characterized as under honorable conditions (general). She completed 2 years, 3 months, and 8 days of net active service.

9. The applicant provides:

- a. Documentation highlighting her post-service accomplishments (13 pages).
- b. A VA Rating Decision shows the applicant has a combined service-connected disability rating of 70 percent, effective 19 May 2022.
- c. In three statements of support, dated 22 May 2023 to 14 August 2023, the authors state the applicant was deprived of her MGIB benefits, preventing her from enriching her and her daughter's futures.

10. The applicant's record contains correspondence between the Army Review Boards Agency (ARBA) and the Office of Congresswoman [REDACTED] regarding the status of the applicant's case.

11. The VA manages the MGIB. The applicant's request for reinstatement of eligibility or reimbursement of eligibility payments for this program is outside this Board's purview and should be directed to the VA.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under honorable conditions (general) character of service, restoration of her rank/grade to private first class/E-3, removal of all derogatory information from her service record, and reinstatement of her Montgomery GI Bill (MGIB) benefits. She contends PTSD, OMH, and MST as related to her request. This opine will narrowly focus on her request for an upgrade of her character of service and will defer all other requests to the Board.

b. The facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant enlisted into the Regular Army on 31 July 1997.
- Applicant's immediate commander notified the applicant on 29 September 1999 of his intent to initiate action to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2, by reason of unsatisfactory performance. The commander noted the applicant violated two general orders and was considered absent without leave (AWOL), which resulted in a field grade Article 15 (not available for review). She received numerous negative counseling involving failure to be at her appointed place of duty and bouncing checks.
- On 26 October 1999, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirements, and directed the issuance of a General Discharge Certificate.
- Applicant was discharged, on 8 November 1999, in the grade of E-2, under the provisions of Army Regulation 635-200, Chapter 13, by reason of unsatisfactory performance. Her service was characterized as under honorable conditions (general) with separation code JHJ, and reentry code 3.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, she was sexually assaulted while deployed to Riyadh, Saudi Arabia. Her chain of command began a series of retaliatory disciplinary write-ups after she filed a report and applied for emergency reassignment. She did not receive mental health assistance and was ostracized by her unit. The sexual assault and mistreatment led her to end her career. Her general discharge prevented her from

using her MGIB, causing financial and emotional hardships. She is diagnosed with post-traumatic stress disorder (PTSD)/military sexual trauma (MST) with anxiety and depressive episodes.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected, including 50% for MST-related PTSD. The applicant is currently being treated for her symptoms of MST-related PTSD. She initially requested assessment and treatment for MST on 11 July 2007. During a comprehensive assessment on 7 August 2007, she reported the sexual assault happened in Saudi Arabia. The applicant along with a co-worker were invited to the assailant's home for a promotion party. At the last minute the co-worker canceled, and a male co-worker (NCO) agreed to pick her up and drop her off. The man who invited her stated he needed to talk to her in a back room, at which time he raped and physically assaulted her, repeatedly, including attempting to smother her. She screamed but noise from the party prevented anyone from hearing her. Ultimately, he let her go but forced her to write an agreement on a piece of paper that she would never tell anyone. The man who picked her up (NCO) elicited information about the rape and told her to report, although she did not want to. The assailant denied assaulting her and the evidence was apparently inconclusive. The applicant participated in a C and P examination on 25 October 2018. She was diagnosed with PTSD and the report references the applicant's service record, which contained a note dated 13 November 1998 stating, "19-year-old Active-Duty female with complaints of being sexually assaulted at approximately 0001 hours. She attended a party at villa 63-4."

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 experienced MST and developed a subsequent mental health 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 selected OMH and PTSD on her application as related to her request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts experiencing MST and is service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to unsatisfactory performance. The applicant asserts the mitigating experience of MST and is service connected for PTSD. Given the

association between MST and avoidant behavior, the applicant's misconduct of being AWOL, failure to be at her appointed place of duty, and bouncing checks are mitigated. In addition, her violation of two general orders is mitigated by the association between her experience of MST and difficulty with authority. Overall, it is more likely than not, had the applicant not experienced MST during military service, she would have been able to successfully complete the term of her enlistment with an honorable characterization of service at the time of discharge.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant experienced MST and developed a subsequent mental health condition that mitigates her discharge.
2. The Board acknowledged the applicant's contentions that she was sexually assaulted while deployed to Riyadh, Saudi Arabia, and subsequently subjected to retaliatory disciplinary actions by her chain of command after filing a report and requesting emergency reassignment. Evidence in the record shows she did not receive mental health assistance and was ostracized by her unit circumstances that contributed to the premature end of her military career. Although her separation was processed under Army Regulation 635-200, Chapter 13, for unsatisfactory performance, the Board determined there is sufficient evidence of in- service mitigating factors to support the applicant experienced military sexual trauma (MST) and developed post-traumatic stress disorder (PTSD) with associated anxiety and depressive episodes.
3. Furthermore, the Board found the applicant was only 19 years old at the time of her deployment and the reported MST. The subsequent disciplinary issues chronic lateness and financial instability appear to be symptomatic of untreated trauma rather than willful misconduct. The Board agreed the applicant's General discharge, issued without consideration of her mental health condition, unjustly barred her from accessing Montgomery GI Bill benefits. Therefore, the Board granted relief to upgrade the applicant's discharge to honorable, restored her rank to private first class/E-3, reinstatement of her Montgomery GI Bill (MGIB) benefits, amend her narrative reason to secretarial authority and remove all derogatory information expunged from her service record.

4. The Board considered the following 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 selected OMH and PTSD on her application as related to her request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts experiencing MST and is service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to unsatisfactory performance. The applicant asserts the mitigating experience of MST and is service connected for PTSD. Given the association between MST and avoidant behavior, the applicant's misconduct of being AWOL, failure to be at her appointed place of duty, and bouncing checks are mitigated. In addition, her violation of two general orders is mitigated by the association between her experience of MST and difficulty with authority. Overall, it is more likely than not, had the applicant not experienced MST during military service, she would have been able to successfully complete the term of her enlistment with an honorable characterization of service at the time of discharge.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	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 reissuing the applicant a DD Form 214 for the period ending 8 November 1999 showing removal of derogatory information from her military record, reinstatement of her Montgomery GI Bill (MGIB) benefits and showing in:

- Item 4a (Grade, Rate or Rank) PFC
- Item 4b (Pay Grade) E-3
- Item 24 (Character of Service) Honorable
- Item 28 (Narrative Reason) Secretarial Authority.

X //SIGNED//

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 (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, 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 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, and reviews to ABCMR applicants prior to adjudication.

3. Army Regulation 340-21 (The Army Privacy Program) paragraph 2-10 (Amendment of Records) states individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgement, irrelevant, untimely, or incomplete. Consideration of a request for amendment would be appropriate if it can be shown that circumstances leading up to the event recorded on the document were challenged through administrative procedures and found to be inaccurately described.

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

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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. 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.

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 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 post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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.

//NOTHING FOLLOWS//