

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240005577

APPLICANT REQUESTS:

- an upgrade of her characterization of service from uncharacterized to honorable or general, under honorable condition and her narrative reason for separation
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-526EZ (Department of Veterans Affairs (VA) Application for Disability Compensation and Related Compensation Benefits), undated
- Medical Records (71 pages)

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:

a. She believes her discharge and absent without leave (AWOL) status could have been prevented if she had received the proper help after her rape. She was 17 years old and scared. She was asked to "let it go" and in return she would receive help getting into noncommissioned officer classes and a promotion in rank. She refused and was put on suicide watch, then taken to mental health where she was kept and forced to take Quetiapine or Seroquel.

b. Once she was released back to the barracks, she continued to pursue getting justice. She stopped taking the medications because she was so doped up that she would sit in the dayroom drooling on herself like a zombie. She was told that if she did

not continue to take the medication she would be sent back to mental health. She fled base and hid with three other AWOL Soldiers. They all agreed to turn themselves in and ask for discharges if they could not get proper help. Just being on base gave her panic attacks.

3. The applicant provides:

a. VA Form 21-526EZ, which shows she submitted a claim to VA for Post Traumatic Stress Disorder (PTSD) and Military Sexual Trauma (MST).

b. 71 pages of medical records.

(1) Medical records show the applicant was admitted to Dwight David Eisenhower Army Medical Center on 4 December 2006 and discharged on 7 December 2006. The applicant's chief complaint was depressed mood, thought of cutting on self and a plan to jump into traffic due to stressors. She was diagnosed with the following:

- Adjustment Disorder with Depressed Mood
- Personality Disorder, not otherwise specified, with Borderline Traits
- Right Foot Contusion, resolving
- Occupational Problems. Problems with Primary Support Group.  
Relationship Problems
- GAF 50

(2) The applicant stated her thoughts of wanting to cut on herself and jump into traffic worsened since her boyfriend told her that he was leaving her. She was crying unstopably and was emotionally labile in the Outpatient Behavioral Health Services. The applicant stated she was allegedly "raped" about one month ago which brought back flashbacks and nightmares of her alleged "gang rape" from December 2005. She felt "depressed" with some anhedonia, insomnia, and poor concentration for the past several weeks. She went AWOL for one month and returned 10 days ago. She was pending Article 15 for this AWOL incident. The applicant denied any homicidal ideations or homicidal plans.

(3) The applicant joined the Army approximately five months ago. She had been in Advanced Individual Training for five months. She worked as a "prostitute and dealer of drugs" in Oklahoma before joining the Army. The applicant stated she was physically abused by her stepfather.

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

a. She enlisted in the Regular Army on 26 July 2006.

b. The applicant's service record does not contain the separation packet or the facts and circumstances pertaining to her chapter proceedings.

c. The applicant was discharged on 23 February 2007. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 14-12c (1), by reason of misconduct (AWOL). Her service was uncharacterized. She completed 6 months and 28 days of net active service this period. This form also shows in:

- Item 11 (Primary Specialty): None
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): None
- Item 18 (Remarks): Member has not completed first full term of service.
- Item 26 (Separation Code): JKD
- Item 27 (Reentry Code): 3

5. On 11 February 2025, the Department of the Army, Criminal Investigation Division (DACID) provided a response to the request for redacted CID/Military Police reports pertaining to the applicant. CID stated a search of the Army criminal file indexes revealed no Sexual Assault investigation pertaining to the applicant.

6. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within that Board's 15-year statute of limitations.

7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to her characterization of service from uncharacterized to honorable. She contends she experienced a 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 26 July 2006.
- The applicant had charges of going AWOL preferred against her (date unknown) for violations of the Uniform Code of Military Justice. She voluntarily requested discharge, which was approved by her commander.

- The applicant's service record does not contain the separation packet or the facts and circumstances pertaining to her chapter proceedings.
- On 11 Feb 2025, Criminal Investigation Division (CID) reported that Army criminal file indexes noted the absence of any sexual assault investigation regarding applicant.
- The applicant was discharged on 23 Feb 2007, and she was credited with 6 months and 28 days of net active service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 14-12c (1), by reason of misconduct (AWOL). Her service was uncharacterized.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts her discharge and AWOL episode could have been avoided if she had received appropriate care following the "rape" (MST). She further asserts that she was advised to let go of the issue, which she refused to do, and subsequently was placed on suicide watch and medications. Supplemental Medical Data (4 Dec 2006) noted suicidal thoughts, difficulty coping with advanced individual training (AIT), relationship problems and nonconsensual sex which brought back dreams of a previous sexual assault incident. This document also noted that she was pending UCMJ for "recent AWOL." She was placed on a medication primarily to help with her sleep, and she was diagnosed with an adjustment disorder. A Psychiatric Admission Assessment on 4 Dec 2006 did not identify any prior BH hospitalizations but noted current thoughts of cutting herself and intent to jump into traffic. She was upset that boyfriend wanted to leave her. She reported being sexually assaulted a month ago which induced flashbacks of "gang rape" (Dec 2005). She reported being depressed, insomnia and poor concentration for several weeks. She recently went AWOL for a month and awaited an Article 15. She has a history of self-mutilation. The note indicated a history of prostitution and drug dealing prior to her enlistment. She also reported physical abuse from her stepfather who compelled her to join the Army. The psychiatrist reported unstable relationships and probable inability to function in the Army. Other stressors included recent death of 2-month-old godchild and mother's protracted divorce. The applicant was diagnosed with Adjustment Disorder with Depressed Mood, borderline traits and rule out mood disorder. She was returned to duty pending a Chapter 5-13. The applicant was discharged to her command on 7 Dec 2006, indicating a desire to get out of the Army and go home to help her mother. She participated in group therapy during her hospital stay and tested negative for drugs in her system. There was sufficient evidence that the applicant was diagnosed with mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a history of mental health related treatment or diagnoses. A Psychological Assessment (3 Nov 2006) was

conducted due to her concern of having to contend with past and present issues. She noted being gang raped at age 16, reporting it, and subsequently the case was dropped with lack of evidence. In the aftermath, she tried to kill herself with an overdose of oxycontin and liter of vodka. She also reported being sexually assaulted by a soldier on 27 Oct 2006. She went to the ER and saw a patient advocate. The sexual assault (MST) reportedly started as consensual, but she then attempted to stop it. She reported being stressed over home issues and death of a 3-month-old infant. She willingly contracted for safety and was diagnosed with Acute Reaction to Stress. A Psychiatry note (2 Dec 2006) indicated she was seen at the ER for suicidal ideation. She reported going AWOL for about a month after being sexually assaulted. She expressed having difficulties with unit command and peers regarding the incident and UCMJ actions. On 4 Dec 2006 she presented to the BH outpatient clinic as a walk-in and reported being unable to control her emotions, and she discussed her history of sexual assault, including childhood and MST. She was diagnosed with Adjustment Disorder with Depressed Mood and admitted to an inpatient psychiatric unit. She discharged on 7 December 2006 on an antipsychotic medication used for sleep and the diagnosis of Personality Disorder, Not Otherwise Specified with Borderline Traits was added. She attended on outpatient therapy session prior to her discharge from the military.

e. The applicant initiated BH services with the VA in Aug 2020. The first BH session occurred on 25 Aug 2020 (nearly 14 years post-discharge) due to experiencing anxiety, panic, insomnia, nightmares, depressed mood, isolating and intrusive memories. The psychologist noted the main complaint was MST-related symptoms of anxiety, panic, insomnia, nightmares, hypervigilance, depressed mood, isolating, intrusive memories and avoidant behavior. She noted the main trauma in the military was the "rape" (sexual assault/MST) including the aftermath in her attempt to report it and being compelled to go to a mental facility and take medications. However, ultimately, she was determined to be ineligible for services at VA and was referred to a Vet Center.

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

g. 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, which resulted in PTSD, at the time of the misconduct. The applicant was hospitalized and diagnosed with Adjustment Disorder with Depressed Mood and a subthreshold condition of acute reaction to stress (often a precursor to PTSD) was made by a DoD provider during her time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing MST, resulting in PTSD, while on active service. DoD documentation reflects that she reported sexual assault while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant has had a fully mitigating BH experience, MST. As there is an association between MST and avoidant behavior, there is a nexus between her experience of MST and her misconduct of going AWOL. The applicant is also requesting consideration of a change in her uncharacterized discharge to an honorable discharge. Under Liberal Consideration, there is sufficient evidence to support the board's consideration of this change.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that mitigated her misconduct. Therefore, the Board concluded an upgrade to under honorable conditions (General) was warranted. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she experienced MST, which resulted in PTSD, at the time of the misconduct. The applicant was hospitalized and diagnosed with Adjustment Disorder with Depressed Mood and a subthreshold condition of acute reaction to stress (often a precursor to PTSD) was made by a DoD provider during her time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing MST, resulting in PTSD, while on active service. DoD documentation reflects that she reported sexual assault while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant has had a fully mitigating BH experience, MST. As there is an association between MST and avoidant behavior, there is a nexus between her experience of MST

and her misconduct of going AWOL. The applicant is also requesting consideration of a change in her uncharacterized discharge to an honorable discharge. Under Liberal Consideration, there is sufficient evidence to support the board's consideration of this change.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|     |     |     |                      |
|-----|-----|-----|----------------------|
| :XX | :XX | :XX | GRANT FULL RELIEF    |
| :   | :   | :   | GRANT PARTIAL RELIEF |
| :   | :   | :   | GRANT FORMAL HEARING |
| :   | :   | :   | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 23 February 2007 to show in:

- item 24 (Character of Service): under honorable conditions (General)
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 28 (Narrative Reason for Separation): Secretarial Authority

  
X //SIGNED//

CHAIRPERSON  
Signed by:

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 (AR) Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. If characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be described as uncharacterized.

e. For Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty (AD) or the first 180 days of continuous AD following a break of more than 92 days of active military service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12c (1) for misconduct (AWOL) would receive a separation code of "JKD."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. 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.

8. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//