

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240005698

APPLICANT REQUESTS: her DD Form 214 (Certificate of Release or Discharge from Active Duty) be changed to reflect:

- Item 24 (Character of Service): Honorable vice under honorable conditions (general)
- Item 28 (Narrative Reason for Separation): remove in lieu of trial by court-martial

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

- DD Form 149 (Application for Correction of Military Record)
- Personal statement
- VA letter, 21 January 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 has post-traumatic stress disorder (PTSD) due to combat tour for Operation Iraqi Freedom 26 January 2003 – 5 July 2003 with 3d Infantry Division in which she served forward and witnessed individuals who were wounded or killed (burned bodies). She was in a position of advising on rules of engagement including allowing women and children as collateral damage. On her return, she was not properly screened, assessed, or offered mental health services. She was assigned to the Pentagon to work on war crimes investigations where she had to gather, process, and was exposed to evidence of horrific atrocities. Again, no mental health services were offered to her. She struggled daily to process and function. With time, her condition deteriorated, and she experienced daily symptoms of PTSD including anxiety, impaired sleep, depression, lack of motivation/mood, panic attacks, and occupational/social/relationship impairment.

a. Her marriage fell apart and she had an affair with an unmarried enlisted coworker (whom she later married). The chain of command still did not inquire as to her mental health and impact of combat service, but rather brought her up on court-martial charges threatening her with incarceration - at the time her daughters were just 1 and 3 years old which further negatively impacted her condition. Rather than risk incarceration, she felt she had no choice but to elect resignation/discharge in lieu of court martial. Her condition continued to worsen over the years, and she is now considered/awarded 50% disabled due to PTSD from military service.

b. Delay in seeking correction is attributed to her PTSD condition and the humiliating and painful manner in which court-martial charges were brought against her to secure discharge. In addition to the significant PTSD symptoms noted above, she was made to feel guilt, shame, lack of respect, fear - including incarceration and loss of custody of her children, sadness, loss, worry, and suspicion, disappointment, and betrayal of military among other things. In recently seeking mental health counseling and medication, she is in a better state of mind to deal with these issues and finally request correction.

3. The applicant was appointed as a Reserve Commissioned Officer of the United States Army on 21 November 2000.

4. She served in Kuwait from 26 January 2003 – 21 March 2003 and then in Iraq from 22 March 2003 – 5 July 2003.

5. On 11 April 2006, an Army Regulation (AR) 15-6 (Procedures for Investigating Officers and Boards of Officers) Investigating Officer (IO) was appointed to inquire into the facts and circumstances arising out of a letter from Mr. B.K.K. to the Commanding General, U.S. Army Pacific, postmarked 22 March 2006. The letter alleges adultery and conduct unbecoming an officer on the part of his spouse, an officer performing duties in that headquarters.

6. On 20 April 2006, the IO presented findings and recommendations for the investigation. The IO recommended appropriate legal or administrative action be taken against the applicant for adultery, fraternizing, and failure to follow orders.

7. On 13 June 2006, she received non-judicial punishment under article 15 of the Uniform Code of Military Justice for:

- On divers occasions from between on or about 29 January 2006 and 18 April 2006, wrongfully have sexual intercourse with Master Sergeant (MSG) J.A.P., a man not her husband
- On divers occasions between on or about 13 August 2005 and 16 March 2006, violate a lawful general regulation, to wit: paragraph 4-14, AR 600-20 (Army

Command Policy), by wrongfully engaging in a prohibited relationship with Major (MAJ) B.H.

- On divers occasions between on or about 1 September 2005 and 18 April 2006, violate a lawful general regulation, to wit: paragraph 4-14, AR 600-20, by wrongfully engaging in a prohibited relationship with MSG J.A.P.
- On or about 12 February 2006, fail to obey a lawful order by sending an electronic mail message to MAJ B.H. providing legal advice regarding a pending Temporary Duty Fraud and Adultery investigation
- On or about 18 April 2006, fail to obey a lawful order by speaking to MSG J.P. near the "Starbucks Coffee" parking lot on Paiaca Street
- Her punishment included forfeiture of \$2,148.00 per month for two months; suspended for 180 days and to be reprimanded

8. On or about 3 July 2006, she received a general officer memorandum of reprimand for:

a. Taken as a whole, her conduct had disgraced herself and brought shame to the officer corps. In particular, as an officer of the Judge Advocated General's Corps, she had fallen incredibly short of the standards expected of her. Her flagrant disregard for these standards has not only cast significant doubt as to her own integrity, judgment, and fitness to continue as a leader, but it has tainted the trust that Judge Advocates across the Army must possess when rendering some of the most sensitive and complex legal advice affecting the lives and careers of America's Soldiers.

b. In addition, she was ordered to have no contact with MSG J.A.P. There are no exceptions to this prohibition. No contact includes, but is not limited to, any form of personal interaction and communication. Communication includes all forms of written and verbal exchanges, as well as contact through third parties. She will also refrain from coming within 100 feet of MSG P.'s presence or residence at any time. If MSG P. attempts to contact her, either personally or through a third party, she will instantly end the communication without responding and notify the Commanding General (CG) immediately by sending an electronic message to the Staff Judge Advocate. This order remains in effect until specifically rescinded by the CG or until she is separated from active duty.

9. DA Form 2823 (Sworn Statement) made by MAJ C.J.E. on 18 July 2006, states on 17 July 2006, at approximately 0825 he saw both MSG P. and the applicant in a car together. The car pulled in front of building 520 as he was getting out of his vehicle. The car stopped briefly in front of the building, and coincidentally in front of his vehicle, then proceeded around the corner of the building. At that point he could not see the car. Later that morning around 1030 he informed the 516th Deputy Brigade Commander of what he saw.

10. DA Form 2627-2 (Record of Supplementary Action under Article 15, UCMJ) shows on 2 August 2006, her punishment that was suspended on 13 June 2006, was vacated based on having knowledge of a lawful order issued by Major General B.M. to have no further contact with MSG J.P., an order which it was her duty to obey, did, at or near Fort Shafter, Hawaii, on or about 17 July 2006, fail to obey the same by being together in a car in front of building 520 on Fort Shafter.

11. Orders 333-0004, United States Army Garrison – Hawaii, Schofield Barracks, HI on 29 November 2006, shows she was reassigned to U.S. Army transition point for transition processing with a report date of 15 December 2006.

12. The applicant's record is void of the complete facts and circumstances that led to her separation. However, her service record contains a mostly visible DD Form 214 that shows she was discharged under honorable conditions (general). It also shows:

- Item 24 (Character of Service): Under Honorable Conditions (General)
- Item 25 (Separation Authority): AR 600-8-24 (Officer Transfer and Discharges), paragraph 3-13
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial

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

14. The applicant provides VA letter, 21 January 2024, which shows service connection for PTSD granted with an evaluation of 50 percent effective 14 September 2023.

15. 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.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under honorable conditions (general) to honorable and change to narrative reason for separation to remove in lieu of trial by court martial. She contends she experienced an undiagnosed mental health condition, including 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 was appointed as a Reserve Commissioned Officer of the United States Army on 21 November 2000.

- The applicant served in Kuwait from 26 January 2003 to 21 March 2003 and then in Iraq from 22 March 2003 to 5 July 2003.
- On 13 June 2006, she received NJP for wrongfully having sexual intercourse with a MSG J.A.P., not her husband; wrongfully engaging in a prohibited relationship with MAJ B.H.; wrongfully engaging in a prohibited relationship with MSG J.A.P.; failing to obey a lawful order by sending an electronic mail message to MAJ B.H. providing legal advice regarding a pending Temporary Duty Fraud and Adultery investigation; failing to obey a lawful order by speaking to MSG J.A.P.
- On or about 3 July 2006, she received a general officer memorandum of reprimand for: her conduct and bringing shame to the officer corps, particularly, as an officer of the Judge Advocated General's Corps. She was ordered to have no contact with MSG J.A.P.
- Orders on 29 November 2006, shows she was reassigned to U.S. Army transition point for transition processing with a report date of 15 December 2006.
- The applicant's record is void of the complete facts and circumstances that led to her separation, but her DD214 showed ILO trial by court-martial.

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 asserts she was exposed to combat-related trauma during a deployment and her assignment at the Pentagon, and her mental health deteriorated resulting in a divorce and affair with an unmarried enlisted soldier. She contends PTSD was a mitigating factor in her misconduct. A VA Rating Decision letter dated 21 January 2024 showed the applicant is 50% service connected for PTSD. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed documentation from a primary care visit on 27 February 2023, which noted increased anxiety and the applicant's request to restart an antidepressant that she had been on eight months prior. An anxiety screening measure showed severe anxiety and a depression measure showed a score in the moderate range. There was indication she had previously received treatment in the community, but those records are not available.

e. A Compensation and Pension (C&P) Initial PTSD examination dated 3 January 2024 was reviewed, and the applicant endorsed the requisite number of symptoms to warrant a diagnosis of PTSD. She reported trauma exposure during deployments to Kuwait (26 January to 21 March 2003) and Iraq (22 March to 5 July 2003), which included expecting to be killed, confusion over the rules of engagement and having to tell troops to "shoot people," and processing dead bodies of soldiers. She also discussed exposure to horrific content in her position through the Pentagon following

the deployment. She reported a treatment history of medication, primarily, but noted she had recently started counseling.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that fully mitigates her misconduct. Misconduct related to disobeying a lawful order could be considered for partial mitigation, but there is no nexus between wrongfully engaging in a prohibited relationship and PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. The applicant is 50% service connected through the VA for PTSD, and there is documentation that she has engaged in medication management for her symptoms since 2023.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service, and there is documentation of deployments to Kuwait and Iraq in 2003.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. There is evidence of a PTSD diagnosis by the VA, and she is 50% service connected for this condition. The applicant reports traumatic experiences from her deployments, and disregard for authority and behaviors such as failing to obey a lawful order could be a natural sequela to a mental health condition. However, there is no nexus between PTSD and misconduct related to wrongfully engaging in a prohibited relationship 1) this type of misconduct is not part of the natural history or sequela of a mental health condition; 2) her asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends she was experiencing a mental health condition or an experience that mitigates her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy pattern of misconduct and the medical review only finding partial mitigation for the misconduct leading to 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 and/or changing the narrative reason for separation.

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.

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, 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) 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of officer personnel. Paragraph 3-17 of this regulation states an officer may submit a resignation for the good of the Service (RFGOS) in lieu of GCM under the following circumstances (cannot submit unqualified resignation): (1) Court-martial charges have been preferred against the officer with a view toward trial by GCM. (2) The officer is under a suspended sentence of dismissal.

a. Paragraph 1-22a, provides that when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, for an officer. When the separation is based solely on preservice activities, substandard performance of duty, or final revocation of a security clearance under DODD 5200.2-R and AR 380-67 for reasons that do not involve acts of misconduct, it will be Honorable.

b. Paragraph 1-22b, provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to an officer whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

3. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons:

- Separation Code DFS applies to officer personnel who were separated with a narrative reason in lieu of trial by court-martial under AR 600-8-24, para. 3-13
- Separation Code BNC applies to officer personnel who were separated with a narrative reason of unacceptable conduct under AR 600-8-24, para. 4-2b and 4-24a (1)
- Separation Code FND applies to officer personnel who were separated with a narrative reason of Miscellaneous/General Reasons under AR 600-8-24, paragraph 3-5

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

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 (BCM/NRs) regarding equity, injustice, or clemency determinations.

a. 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.

b. 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. 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//