

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005727

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions (UOTHC) character of service to under honorable conditions (general).

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), for the period ending 28 December 2005
- Standard Form (SF) 180 (Request Pertaining to Medical Records), dated 17 May 2017
- letter, Department of Veterans Affairs, dated 19 December 2017
- Service Treatment Records (57 pages), dated 4 November 2004 to 6 December 2005
- Patient Clinical Report, dated 2 August 2021
- statements of support (2), undated
- Army Discharge Review Board, Case Report and Directive, Docket Number AR20200008195, dated 3 May 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 an incident occurred while she was on active duty that not only affected her mentally but also physically. It resulted in her having two surgeries. She experienced military sexual trauma (MST), which resulted in her current diagnoses, post-traumatic stress disorder (PTSD) and fibromyalgia.
3. The applicant enlisted in the Regular Army on 3 November 2004. The highest rank she attained was private/E-2. She was not awarded a military occupational specialty.

4. On 27 November 2004, the applicant was seen at the Fort Jackson, SC, Troop Medical Clinic (TMC). Her primary complaint was abdominal pain, with pain that started in her back and ended in her right lower quadrant, pain in her ovaries, black outs, nausea, bilateral knee pain, right ear pain, and tailbone pain. She was diagnosed with a urinary tract infection, overuse, and a pilonidal sinus. She was prescribed medication, given a profile, and recommended for follow up for a surgical consult.
5. She returned to the TMC on 2 December 2004 and was offered an excision of the pilonidal cyst, which she declined. She was returned to training.
6. The applicant underwent a pilonidal cyst excision on 8 December 2004. She was placed on convalescent leave and returned on 11 January 2005. Her available service treatment records show she was regularly treated for wound care and dressing changes from 13 January 2005 to 7 February 2005.
7. Following an examination of 7 February 2005, she was scheduled for a wound debridement and delayed primary wound closure on 9 February 2005.
8. On 13 March 2005, the applicant was reported absent without leave (AWOL) following a period of convalescent leave. She was subsequently dropped from the rolls on 13 April 2005.
9. She was apprehended by civilian authorities in Tuscaloosa, AL, on 28 November 2005 and was returned to military control at Fort Knox, KY, on that same date.
10. A Statement of Options, dated 5 December 2005, shows the applicant elected not to request a separation medical examination and/or mental health evaluation.
11. Court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice on 8 December 2005. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 13 March 2005 until on or about 28 November 2005.
12. The applicant consulted legal counsel on 8 December 2005.
 - a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an UOTHC discharge, and the procedures and rights that were available to her.
 - b. After receiving legal counsel, she voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In her request for discharge, she

acknowledged understanding that by requesting a discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion, She further acknowledged understanding that if her discharge request were approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the VA, and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised she could submit any statements she desired in her own behalf. She elected not to submit a statement.

13. The applicant's commander recommended approval of the requested discharge on 13 December 2005 and further recommended the applicant be separated with a UOTHC discharge.

14. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial, on 16 December 2005, and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

15. The applicant was discharged on 28 December 2005, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 shows her character of service was UOTHC, with separation code KFS and reentry code 4. She completed 5 months and 11 days of net active service, with lost time from 13 March 2005 to 27 November 2005.

16. The Army Discharge Review Board considered the applicant's request for an upgrade of her UOTHC character of service on 3 May 2023. After careful consideration, the Board determined that she was properly and equitably discharged.

17. The applicant provides:

a. An SF 180, dated 17 May 2017, shows the applicant submitted a request for her medical records from the VA. In a letter dated, 19 December 2017, the VA responded, providing her with her Service Treatment Records.

b. 57 pages of Service Treatment Records, dated 4 November 2004 to 6 December 2005, are summarized in pertinent part, in the Record of Proceedings (ROP) above. These records will be further reviewed and summarized in the "MEDICAL REVIEW" portion of this ROP.

c. A Patient Clinical Report, dated 2 August 2021, shows the applicant was diagnosed with Bipolar II Disorder, depressed, with anxious distress, severe; cannabis

use disorder, in early remission, severe; and PTSD, with an onset date of 1 December 2019 for all three conditions.

d. In two statements of support, from longtime friends of the applicant, the authors attest to the applicant's struggles with PTSD and severe pain. She does the best she can to provide a stable environment for her kids, but the anxiety and depression caused by her PTSD and the pain in her buttocks makes it difficult. She has declined physically and emotionally since her surgery by Army physicians. The trauma from her two surgeries still haunt her today. She was not counseled by legal, as requested by her, prior to her separation from the military.

18. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

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

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) character of service to under honorable conditions (general). She contends she experienced military sexual trauma (MST) and resultant PTSD 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 Regular Army on 3 November 2004; 2) The applicant underwent a cyst excision on 8 December 2004. She was placed on convalescent leave and returned on 11 January 2005; 3) On 13 March 2005, the applicant was reported AWOL following a period of convalescent leave; 4) Court-martial charges were preferred against the applicant on 8 December 2005 for being AWOL from 13 March-28 November 2005; 5) The applicant was discharged on 28 December 2005, Chapter 10, in lieu of trial by court-martial. Her character of service was UOTHC, with separation code KFS and reentry code 4. She completed 5 months and 11 days of net active service; 6) The ADRB considered and denied the applicant's request for an upgrade of her UOTHC character of service on 3 May 2023.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV), and hard-copy military and civilian 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 insufficient evidence the applicant has been diagnosed with a mental health condition including PTSD by the VA. There is also insufficient evidence the applicant has reported experiencing MST to the VA. The applicant has intermittently engaged with the VA for assistance for homelessness and behavioral health support since 2021. She also provided hardcopy civilian medical documentation from a Walgreens Drug Store in Alabama. The applicant was prescribed psychiatric MBdistress, Cannabis Use Disorder, and PTSD. All of these mental health conditions including PTSD had an onset date of 01 December 2019. There was no additional information provided on the history of symptomatology or relation to the applicant's military service or history of MST.

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

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 PTSD that mitigates her misconduct. She provided evidence of being diagnosed with PTSD in 2019.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST and PTSD that mitigates her misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. The applicant did indicate on her current application that she experienced MST, and her contention alone is sufficient for the Board's consideration per Liberal Consideration. However, there is insufficient evidence beyond her indication on her current application that the applicant has reported MST and resultant PTSD, which was reported to have an onset date of 2019. Therefore, there is insufficient evidence at this time for mitigation for the applicant's 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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed and the lack of mitigation found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 (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 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - 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 3-7b provides that 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.
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 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. 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.

5. 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.

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, 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.

//NOTHING FOLLOWS//