

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240005852

APPLICANT REQUESTS: in effect, a different separation code to show she was retired by reason of medical disability.

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), 20 February 2024
- self-authored statement (3 pages)
- [REDACTED] College transcripts, 26 July 2005
- Medical documentation, from 5 January 2009 through 26 January 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 May 2009
- Orders D-08-313148, 6 August 2013
- Medical documentation, 8 August 2014
- Department of Veterans Affairs (VA) Problem List
- VA Rating Decision, 22 August 2023
- Official Military Personnel File, 59 pages
- Lawyers Serving Warriors Documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 endured hardships since her discharge. She enlisted at 17-years-old, while in advanced individual training she was subjected to sexual assault by a Drill Sergeant. She suffered her first suicidal thought due to the outcome of the court-martial. She describes various traumatic events which include but are not limited to being drugged during her time in Airborne School, receiving an Article 15 for underage drinking, and receiving unwelcomed advances from a sergeant.
  - a. She mentions moments of recognition and accolades, such as receiving Soldier of the Month and Quarter, multiple medals, receiving a bronze statue during her

deployment, obtaining a top-secret security clearance. She was in the process of applying for the Green to Gold program and took a language test to move into psychological operations.

b. She was promised a promotion to sergeant; however, suffered harassment and abuse by the hands of those meant to protect her. She mentions different Soldiers making appalling remarks, stating her promotion was contingent upon engaging in a sexual relationship. She was trapped in a nightmare, with no escape, even with reporting various events to the Equal Opportunity office she received little relief. Additionally, she sought help from her commanding officer, which was no help and made her feel discriminated and betrayed. Her spirit was crushed.

c. She mentions her loss of a fellow Soldier, traumas, seeing combat, unforgiving conditions of military life, and post-traumatic stress disorder (PTSD), were reasons she sought help. She was unable to receive the help she required. She was discharged and since her discharge she has struggled. She was denied the opportunity for a fair and just resolution, branded with a discharge that was forced upon her, felt like a final betrayal.

d. She requests the Board gives her a chance to reclaim a sliver of the life in which was torn from her, and thanks the Board for their time. Additionally, she mentions in a lawyer application for assistance with obtaining a medical retirement, she was extended for three months to start the Medical Evaluation Board proceedings; however, due to the timeline being too long she was pushed to her expiration term of service.

3. The applicant enlisted in the Regular Army on 18 August 2005, for a period of 3 years and 24 weeks. She extended her enlistment on 30 January 2009 for an additional two months and on 24 March 2009 for an additional one month.

4. She was awarded the military occupational specialty of 92Y (Unit Supply Specialist). The highest rank she attained was specialist/E-4.

5. The applicant was released from active duty on 1 May 2009, and transferred to the U.S. Army Reserve (USAR) Control Group, under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 4, in the grade of E-4. Her DD Form 214 shows her service was honorable with separation code MBK (Completion of Required Active Service) and reentry code 1. She completed 3 years, 8 months, and 14 days of active service. She served in an imminent danger pay area, Afghanistan, from 28 December 2006 to 7 March 2008. She was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Afghanistan Campaign Medal with Campaign Star

- Army Commendation Medal
- Army Achievement Medal (2nd award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- North Atlantic Treaty Organization Medal
- Parachutist Badge

6. Orders D-08-313148, issued by the U.S. Army Human Resources Command, Fort Knox, KY on 6 August 2013, show the applicant was honorably discharged from the USAR.

7. The applicant additionally provides:

- a. █ College transcripts, showing her grade point averages, classes taken from the spring of 2001 to spring 2004, this does not show a year graduated.
- b. Medical documentation from 5 January 2009 through 26 January 2009, showing she underwent medical appointments and treatment for PTSD and sexual trauma. She attended appointments for psychological assessments, mental status examination, and PTSD assessment. Multiple references of sexual trauma were stated, while referencing her discharge in February 2009, while requesting determination of manifests sexual assault-related PTSD.
- c. Medical documentation dated 8 August 2014, showing she applied for a disability assessment based upon psychiatric issues arising at least in part, from her military service. The provider diagnosed her with, but not limited to, persistent depressive disorder with unexpected panic attacks, repeated suicide attempts and impulses worsened during post-partum periods. Recurrent agoraphobia with expected panic attacks, PTSD based upon military sexual trauma, and episodic domestic violence with on-going relationship problems. It was found, she required monthly visits with a psychiatric knowledgeable in treatment of both mood and anxiety disorders, familiarity with issues of sexual trauma would be essential, it was further recommended the applicant enroll in extended trauma therapy program.
- d. VA medical documentation, starting 3 January 2011 through 20 February 2024, showing various medical problems which include but are not limited to PTSD, major depressive disorder, generalized anxiety disorder, postpartum depression, attention deficit hyperactivity disorder, social phobia, and cluster B personality disorder.
- e. VA decision documents which shows she received a combined rating evaluation of 90% for service-connected disabilities. Additional documentation submitted shows

she completed an application for free legal assistance with obtaining a medical retirement.

8. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

9. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

10. Title 38, Code of Federal Regulations (CFR), Part IV establishes the VA Schedule for Rating Disabilities (VASRD). The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

**MEDICAL REVIEW:**

a. Background: The applicant is applying to the ABCMR requesting a different separation code to reflect being retired due to a medical disability. She contends she experienced sexual assault/harassment (MST) and the development of a mental health condition, including PTSD during her time in service.

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 18 Aug 2005. During her time in service, she was deployed to Afghanistan from 28 Dec 2006 - 7 Mar 2008.
- A final CID report (24 Jan 2007) indicated that the charge of "indecent assault" was determined to have insufficient evidence. A second CID investigation (11Jul 2007) concluded that an AIT Training NCO committed "Cruelty and Maltreatment and Indecent Assault" toward applicant. A third CID report (12 Jun 2012) concluded that probable cause could not be established that a Specialist committed "rape and assault" of applicant, and that she consented to "intercourse."
- The applicant was Honorably discharged on 1 May 2009, and she was credited with 3 years,8 months and 14 days of net active service. She was subsequently transferred to the USAR and was released in 2013.

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 she was sexually assaulted by a drill sergeant as well as being subjected to unwanted advances from other soldiers. The application contained numerous pages of DoD treatment notes, which in large part are elucidated in the JLV section, and the additional documentation outlines a history of evaluation and treatment of PTSD resulting from MST. These records will be summarized below. The application included documentation from 8 Aug 2014 by a civilian forensic psychiatrist who noted a profound degree of impairment and recommended therapy groups, monthly psychiatrist visits and intensive therapy. She was diagnosed with Persistent Depressive Disorder, PTSD, MST, "Panic Attacks" and Agoraphobia. A VA summary of benefits letter dated 20 Feb 2024 showed the applicant is 100% service connected and considered totally and permanently disabled. Documentation included showed a 70% rating for PTSD with Major Depressive Disorder and Panic Disorder with Agoraphobia. There was sufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition by DoD BH providers 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 the applicant initiated behavioral health treatment on 31 Aug 2006 due to a relationship break up. She told her CSM she wanted out of the Army, reported suicidal ideation, and was placed on buddy watch. She was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct. On 29 Sep 2006 she was seen for a command directed mental health evaluation and was diagnosed with ADHD, and she was psychiatrically cleared for administrative action deemed appropriate by command. Documentation discussed a possible administrative discharge due to "failure to adapt" and an alleged drinking incident resulting in her climbing out of a first-floor bathroom window to avoid a breathalyzer test. On 21 Jul 2008, applicant reported "suicidal ideation since AIT," which had worsened recently and become more unmanageable. She willingly agreed to be admitted to the inpatient psychiatric unit for further evaluation and stabilization, and there was no change from her previous diagnosis of an Adjustment Disorder. She was discharged on 23 Jul 2008 and referred to the outpatient clinic where it was determined she was at low risk for self-harm. The applicant reported to a BH provider (27 Aug 2008) that she would be discharged from the Army and was optimistic about her future. She was next seen on 9 Oct 2008 and reported continued trauma-related symptoms, and she requested a referral to an off-post mental health provider. A command directed mental health evaluation was initiated on 18 Dec 2008 because the applicant reported a PTSD diagnosis made by the off-post provider. However, due to incomplete paperwork, the evaluation was rescheduled for a week later, but an encounter on 2 Jan 2009 indicated her chart would be closed since she was seeking services off-post. On 5 Jan 2009, applicant requested to be assessed by another BH provider because her off-post provider diagnosed her with sexual assault-related PTSD, and she wanted a military BH provider's diagnosis. She again reported six separate sexual assault incidents. She was

diagnosed by the DoD provider with "sexual assault-related Post-Traumatic Stress Disorder, Chronic, Severe (Provisional)." Further assessment regarding the sexual assaults occurred in Jan 2009. The results of a battery of psychological testing (22 Jan 2009) indicated a severe degree of PTSD, depressive mood, and personality disorder traits. The last of these three additional assessment sessions (29 Jan 2009) noted that she was further traumatized by the court-martial of the identified perpetrator who was found not guilty. The BH provider retained the provisional PTSD diagnosis, adding that Borderline personality traits were suspected. The treatment plan indicated further assessment was needed to determine sexual assault-related PTSD without the provisional qualifier and ultimately the Army disposition of her case. One option entailed being found eligible for an MEB with a referral to a civilian or military psychiatrist. An evaluation drawn from four sessions in Jan 2009 indicated borderline personality traits adversely impacting accurate assessment of sexual assault-related PTSD reactions and confirming unfitness for further military service. On 16 Feb 2009, further assessment of the sexual assaults concluded that her case was resolved, indicating inconsistency with some of the rape allegations and that she did not meet the criteria for an MEB. A Report of Mental Status Evaluation dated 26 Jan 2009 was included in this documentation and showed that the applicant was diagnosed with PTSD (MST related), Adjustment Disorder with Depressed Mood (by history), and a "rule out" diagnosis of Somatization Disorder. It was noted that "it is likely that there can be some noticeable improvement in symptoms once she leaves the Army due to those inherent military stressors," and there is discussion of her problematic personality traits, which existed prior to service, making it difficult to accurately assess the severity of her PTSD. Documentation from 6 Mar 2009 showed that she sought MH treatment again on post and reported anxiety symptoms, and she was started on an antidepressant medication with indication she would continue psychotherapy with her off-post provider. At follow up on 27 Mar 2009, she reported continued PTSD related symptoms and was prescribed a medication for nightmares. Her diagnosis was Chronic PTSD, and it was noted that she would get a refill of the medications prior to her discharge on 1 May 2009. It is noteworthy to point out that the documentation from the four sessions in January 2009 specifically focused on the multiple sexual assault allegations and inconsistencies in the applicant's reports, and the documentation suggests that the clinical provider may have been attempting, in a less than objective manner, to disprove the applicant's account of the sexual assaults. There is discussion of options for ETS, administrative discharge, or MEB, and the applicant may have opted for the least complicated discharge option, to ETS, as a way of avoiding continued service, which would be consistent with MST related PTSD.

e. The applicant initiated BH services through the VA on 18 Feb 2011 and completed an MST evaluation in which she reported a history of hospitalization at Womack AMC (May 2010) for suicidal ideation. She requested getting back on an antidepressant and was admitted to the MST program with diagnoses of PTSD and Major Depressive Disorder. On 17 Nov 2011, the applicant indicated a readiness to start the MST program

that she had delayed due to relationship difficulties and other psychosocial problems, but she did not keep her appointment. The applicant reinitiated VA contact on 09 May 2013, noting mood and anxiety difficulties, as well as relational problems and unemployment. An MST consult (25 Jul 2014) noted the applicant's report of having done an evidence-based psychotherapy treatment for PTSD while in Afghanistan as well as both individual and group therapy in [REDACTED]. The applicant continued to be involved in individual, marital, and group therapy from 2014 -2024. She struggled with periods of suicidal ideation, incarceration, assaultive behavior, VA court treatment, domestic violence and employment problems. Her most recent therapy session (07 Aug 2024) was focused on the death of her father and grieving the personal loss. She was diagnosed with Generalized Anxiety Disorder and Depressive Disorder Unspecified.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the applicant was diagnosed with PTSD related to MST while on active service, and she is 70% service-connected for PTSD. Despite the DoD BH provider's determination that she did not qualify for an MEB, the documentation does support that the applicant was psychiatrically unfit at the time of discharge for a boardable mental health condition, as she did have persistent or reoccurring symptoms requiring psychiatric hospitalization and necessitating duty limitations (AR 40-501, para 3-33c). It is furthermore the opinion of this BH Advisor that there is sufficient evidence to warrant a referral to IDES. The applicant had mental health diagnoses, including PTSD resulting from MST, and had received BH treatment dating back to 2006. There is evidence in available documentation of a psychiatric hospitalization for suicidal ideation following her sexual traumas, and there is extensive evidence of PTSD symptoms throughout her time in service. The applicant's history of MSTs and clear evidence of significant impairment while on active duty as manifested by suicidal ideation, psychiatric hospitalization, and interpersonal instability are suggestive of a level of impairment that would not meet psychiatric retention standards.

g. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Request is for medical retirement
- (2) Did the condition exist or experience occur during military service? N/A. Request is made for medical retirement
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A. Request is made for medical retirement

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant was diagnosed with PTSD related to MST while on active service, and she is 70% service-connected for PTSD. Based on this, the Board granted relief of referral of her case to the Disability Evaluation System (DES) as recommended by the medical reviewer.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:    :    :    GRANT FULL RELIEF

           GRANT PARTIAL RELIEF

:    :    :    GRANT FORMAL HEARING

:    :    :    DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. Directing the applicant be entered into the Disability Evaluation System (DES) and a medical evaluation board convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.

b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of her case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void her administrative separation and to issue her the appropriate separation retroactive to her original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing her type of discharge without evaluation under the DES.

5/12/2025

X [REDACTED]

CHAIRPERSON  
[REDACTED]

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. 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 (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 – Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel.
  - a. The version in effect at the time provided that 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.
  - b. Chapter 4 (Separation for Expiration of Service Obligation) states a soldier will be separated upon expiration of enlistment or fulfilment of service obligation.
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.

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//