

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240005954

APPLICANT REQUESTS: Correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her characterization of service as "Honorable" rather than "Uncharacterized."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214, for the period ending 26 March 2007

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 that upon enlisting in the military, she embarked on a journey filled with dedication, commitment, and a profound sense of duty. However, her experience during basic training took an unforeseen and traumatic turn when she became a victim of sexual assault perpetrated by a drill sergeant. This reprehensible act shattered her trust, sense of security, and instilled profound psychological trauma that continues to haunt her to this day.

a. The aftermath of the assault resulted in the manifestation of severe Post-Traumatic Stress Disorder (PTSD) and debilitating anxiety, which significantly impaired her ability to fulfill her military duties effectively. Despite her unwavering determination to overcome these challenges, the pervasive effects of the trauma persisted, undermining her physical, emotional, and mental well-being.

b. In addition to grappling with the profound trauma of sexual assault, she was faced with the agonizing decision to relinquish parental control of her first-born child. This heartbreaking choice, made in the midst of grappling with the aftermath of assault and battling untreated mental health issues, compounded the already overwhelming

burden she bore. Regrettably, the stigma surrounding mental health issues within the military and the absence of proper support exacerbated her suffering, leaving her feeling isolated and abandoned. Despite her earnest efforts to seek assistance and advocate for her well-being, the resources and support necessary for recovery were woefully inadequate and inaccessible.

c. Consequently, after exhaustive deliberation and consultation with medical professionals, it became evident that the continuation of her military service under such circumstances was untenable. With a heavy heart and profound regret, she accepted an uncharacterized discharge, recognizing it as the only viable recourse amidst insurmountable challenges. It is her fervent hope that her candid disclosure will shed light on the pervasive issue of sexual assault within the military and underscore the urgent need for comprehensive reform and support for survivors.

d. Furthermore, she implores that her discharge status be reviewed and reevaluated with compassion and understanding, acknowledging the extenuating circumstances that precipitated her departure from military service. In conclusion, she is committed to embarking on a journey of healing, resilience, and advocacy, both for herself and fellow survivors, as they navigate the arduous path toward recovery and justice.

3. On 13 September 2006, the applicant enlisted in the Regular Army in the rank/pay grade of private (PV2)/E-2 for a period of 6 years and 24 weeks.

4. A DA Form 3349 (Physical Profile) shows the applicant was issued a physical limitations profile on 8 January 2007 for pregnancy with an approximate delivery date of 8 September 2007. A request for the applicant to receive obstetric care was submitted the same day.

5. DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on the following dates for the indicated reasons. She was repeatedly advised that failure to meet the standards set by the Army could and would result in administrative action being taken against her that could result in her being discharged from the Army.

a. On 10 January 2007, her first sergeant counseled her regarding her company commander's decision to initiate administrative separation proceedings based upon her pregnancy rendering her unable to complete her required training for military occupational specialty 92F (Petroleum Supply Specialist).

b. On 12 January 2007, a drill sergeant counseled her regarding her insubordination toward a noncommissioned officer. The applicant was advised that continued conduct of

this nature could result in punishment under the provisions of the Uniform Code of Military Justice (UCMJ) and or administrative separation from the Army.

c. On 14 January 2007, a drill sergeant counseled the applicant regarding absenting herself without authority from on or about 13 January 2007 at 2300 hours (bed check) until on or about 15 January 2007 at 1334. She was advised that her misconduct showed a lack of motivation, dedication to duty, total disregard for unit policies, Army Regulations, and directives.

6. On 30 January 2007, the applicant underwent a separation medical examination and was determined to be qualified for administrative separation.

7. On 15 February 2007, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15, of the UCMJ for wrongfully using marijuana between on or about 4 December 2006 and 3 January 2007; and for without authority, absenting herself from her unit from on or about 13 January 2007 and remaining so absent until on or about 15 January 2007. Her punishment consisted of reduction from E-2 to private/E-1; forfeiture of \$601.00 per month for two months; extra duty for 45 days; and restriction for 45 days.

8. On 1 March 2007, the applicant's immediate commander notified her that he was initiating actions to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 11. As the specific reason, the commander cited the applicant's inability to continue training due to becoming pregnant. He further advised the applicant that he was recommending that she receive an entry level separation with an uncharacterized discharge.

9. On 1 March 2007, the applicant's immediate commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 11.

10. On 2 March 2007, the applicant rendered her election of rights wherein she acknowledged she had been advised of the basis for the contemplated action to separate under the provisions of Army Regulation 635-200, Chapter 11, and its effects; of the rights available to her; and the effect of any action taken by her in waiving her rights. She indicated she did not desire to consult with counsel or to provide statements in her own behalf.

11. On 20 March 2007 the applicant's intermediate commander strongly recommended approval of the separation. On 21 March 2007, the separation authority approved the recommended separation with the issuance of an uncharacterized entry level discharge.

12. Orders and the applicant's DD Form 214 show she was discharged on 26 March 2007 under the provisions of Army Regulation 635-200, Chapter 11. Her narrative reason for separation was "Entry Level Performance and Conduct." She was credited with completion of 6 months and 14 days of net active service this period. She did not complete her first full term of service.

13. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of the initiation of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for his or her character of service to be rated.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from uncharacterized to honorable. She contends she experienced an undiagnosed behavioral health condition, PTSD, resulting from sexual assault/harassment (MST) that mitigates her discharge.

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 13 Sep 2006.
- The applicant received nonjudicial punishment under provisions of Article 15 of UCMJ for use of marijuana between 4 Dec 2006 - 3 Jan 2007 and for AWOL from her unit (13-15 Jan 2007).
- A Physical Profile (DA Form 3349) indicated applicant was issued physical limitations profile on 8 Jan 2007 for pregnancy with estimated due date 8 Sep 2007.
- On 10 Jan 2007 the applicant's commander indicated he was initiating actions to separate her from the Army under AR 635-200, Chapter 11 due to inability to train being pregnant.
- The applicant was discharged on 26 Mar 2007, and she was credited with 6 months and 14 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the

applicant's file. The applicant asserts she became a victim of sexual assault/harassment (MST) from a drill sergeant while going through basic training. This resulted in the onset of severe PTSD that impaired her ability to carry out her military duties. A Report of Medical History (30 Jan 2007) identified positive responses in section 17 for depression or excessive worry and use of illegal drugs or abused prescription drugs. It was also noted she was pregnant. A Report of Medical Examination the same day (30 Jan 2007) did not indicate any behavioral health issues. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses. There is no indication of a service-connected disability as well.

e. 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 reported symptoms of depression and excessive worry while on active service, but in the absence of any mental health documentation, there is insufficient evidence to support a diagnosis of PTSD.

f. 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, PTSD, as the result of MST, prior to her misconduct and her discharge related to pregnancy. As part of the separation physical, the applicant reported mental health symptoms of depression and excessive worry, but there was no indication of a mental health diagnosis, including PTSD, while in service or after discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST, resulting in PTSD, while on active service.

(3) Does the condition or experience excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed documentation of the applicant's report of depression and excessive worry while on active service, and the applicant asserts a fully mitigating behavioral health experience, MST. Additionally, the applicant's misconduct related to being AWOL and using marijuana can be natural sequelae to mental health conditions associated with traumatic or stressful events. Therefore, there is a nexus between her misconduct and her assertion of MST. The applicant also contends she developed PTSD because of MST. In the absence of any mental health documentation, there is insufficient evidence to support applicant's contention of PTSD. However, applicant's assertion of MST alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was not 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. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. The applicant did not complete training and was released from active duty due to Entry Level Performance and Conduct after 6 months and 14 days of active duty service. The Board determined her DD Form 214 properly shows the appropriate characterization of service as uncharacterized. Based upon the conduct 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 not warranted.

(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, PTSD, as the result of MST, prior to her misconduct and her discharge related to pregnancy. As part of the separation physical, the applicant reported mental health symptoms of depression and excessive worry, but there was no indication of a mental health diagnosis, including PTSD, while in service or after discharge.

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2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JGA" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on entry level performance and conduct.
3. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
4. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.
 - 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 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014 [Hagel Memorandum], to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions (UOTHC) and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The Under Secretary of Defense for 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 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 UOTHC 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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//