

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006126

APPLICANT REQUESTS: upgrade of her under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Veterans Affairs (VA) decision letter, 17 February 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 was suffering from the residuals of military sexual trauma and not knowing that it was called that at the time, so she ran home and isolated. Once returning she was not offered any treatment or counseling. In a self-authored letter she states:

a. Joining the Army was a decision rooted in her desire to serve her country and pursue a meaningful career path. However, her journey took an unexpected turn due to a series of challenges that deeply affected her well-being and trust for the military which ultimately led to her involuntary separation from the service.

b. When she enlisted, she was optimistic and eager to contribute to something larger than herself. Yet, upon arriving at her duty station in Fort Stewart, Georgia, she found herself grappling with dissatisfaction and emotional turmoil, to eventual sexual assault. The environment within her command exacerbated her struggles, plunging her into a state of depression. Despite her efforts to persevere, the situation only worsened as time went on.

c. Transferring to Germany offered a glimmer of hope for a fresh start, but unfortunately, she encountered similar issues in her new assignment. She faced harassment, battled with depression intensified by separation from her children and an unhappy marriage. The weight of these challenges became unbearable, overshadowing any sense of fulfillment she once felt in her service.

d. She did not go on leave with the intentions of not returning to her assigned unit. As time grew closer for her return, her anxiety and depression levels were so high from her assault, she felt it unbearable. When she decided she needed to return to duty and no longer hide or isolate from others she made a conscious decision to turn herself into the nearest military installation in hopes of obtaining help for what she now knows to be Military Sexual Assault. Instead, upon reporting to Fort Bragg, North Carolina. When she got there, they put her in a holding cell for two days demoted her from E-4 to E-1 and immediately discharge with disgrace.

e. Now she felt she was being punished for her attacker sexually assaulting her. This was a most humiliating feeling so again she felt attacked no matter what her explanation for leaving was. She never got the opportunity to address her instability because it felt as she nor her situation mattered. This unjust treatment compounded her distress, leaving her feeling betrayed and devalued as a woman serving in the military.

f. She acknowledges that her actions may not have been in line with military protocol, but they were driven by desperation and a sincere desire to address her mental health needs. She was a struggling service member in need of assistance and understanding.

g. The other than honorable discharge she received only added to the burden of stigma and shame she carried. It is not a reflection of her character or her commitment to serving her country. Instead, it is a testament to the systemic failures that failed to provide adequate support to service members facing mental health challenges.

h. She respectfully requests that her discharge status be reconsidered and upgraded to honorable. She has taken proactive steps to address her mental health and have worked tirelessly to overcome the obstacles she faced during her time in the Army. She is now ready to move forward with dignity and pride, knowing that her service was not defined by the circumstances that led to her separation.

i. In conclusion, her journey in the Army was marked by adversity, but it also taught her resilience and the importance of advocating for oneself in the face of injustice. She is hopeful that her plea for a fair and just resolution will be met with compassion and understanding.

3. The applicant enlisted in the Regular Army on 29 August 1979.

4. She reenlisted for a period of four years on 2 March 1982.
5. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 13 March 1985, for on or about 18 January 1985, without authority, absent herself from her unit, and did remain so absent until on or about 12 March 1985.
6. After consultation with counsel she voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. She understood that she may request discharge for the good of the service because of the charge preferred against her under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. She also understood:
 - She may be discharged under conditions other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
 - She may be deprived of many or all Army benefits, that she may be ineligible for many or all benefits administered by the Veterans Administration
 - She may be deprived of her rights and benefits as a veteran under both Federal and State law
 - She may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge
7. Her chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that her character of service be under other than honorable conditions.
8. On 2 April 1985, the separation authority approved discharge under the provisions of chapter 10, AR 635-200 for the good of the service. He directed an under other than honorable conditions discharge be issued, and she was to be reduced to the lowest enlisted grade.
9. Accordingly, she was discharged on 16 April 1985, under other than honorable conditions under the provisions of AR 635-200, chapter 10. Her DD Form 214 shows she completed 5 years, 5 months, and 21 days net active service this period. It also shows:
 - Item 26 (Separation Code): KFS
 - Item 27 (Reenlistment Code): 3; 3B; 3C
 - Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court Martial
 - Item 29 (Date of Time Lost During this Period): 850117 – 850311 (17 January 1985 – 11 March 1985)

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

11. During the processing of this case a request for sanitized copies of Criminal Investigative Division/Military Police Reports from Department of the Army, Criminal Investigation Division (DACID) was made. A response was received on 13 December 2024, which stated:

A search of the Army criminal file indexes, utilizing the information provided, revealed no Sexual Assault/ Military Sexual Trauma (MST) investigation pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

12. The applicant provided VA decision letter, 17 February 2024, showing service connection for treatment purposes only for post-traumatic stress disorder was granted.

13. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. 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.

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

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 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 applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant's 5 years of honorable service prior to her

absence without leave and that she voluntarily turned herself in to authorities. The Board concluded partial relief was warranted to upgrade the applicant's characterization of service to under honorable conditions (General).

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XX	:XX	:XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 16 April 1985, to show her character of service as under honorable conditions (General).

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 upgrading her discharge to honorable.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19790829 to 19820301."

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) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. 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.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

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. 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. 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 based on 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//