

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240006146

APPLICANT REQUESTS: an upgrade of her under honorable conditions (general) Discharge to honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 change her separation to honorable due to substance abuse disability. The applicant documented post- traumatic stress disorder (PTSD), sexual assault/harassment and other mental health as issues/conditions related to her request (DD Form 149 (Block #14)).
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 30 April 2003.
 - b. She served in Iraq from 25 February 2004 to 2 March 2005.
 - c. On 20 February 2004, the Criminal Investigation Command (CID) investigated the applicant and found she:
 - wrongful distribution of dangerous drug
 - wrongful possession of dangerous drugs
 - wrongful use of dangerous drugs
 - wrongful use of marihuana

d. On 12 June 2004, she was convicted by a summary court-martial of one specification wrongful use of Ecstasy (MDMA). Her sentence included reduction to the private (E-1), forfeiture of \$597 pay. 45 days hard labor.

e. The available service record is void medical documentation related to post-traumatic stress disorder (PTSD), sexual assault/harassment and or other mental health issues/conditions as documented on the applicant's DD Form 149 (Block #14). On 27 June 2005, a mental evaluation was conducted for the purpose of Chapter 14-12c separation. The Report of Mental Status Evaluation (MEDCOM Form 669-R) indicated:

- she had the mental capacity to understand and participate in the proceedings
- did not suffer from a psychiatric disease or defect that would cause significant defects in judgment or reliability
- she was mentally responsible
- she meets retention standards under the provisions of Chapter 3, AR 40-501 (Does not have an unfitting diagnosis that would require medical evaluation board)
- denies suicidal/ homicidal ideations at this time

f. On 13 September 2005, the applicant was counseled for the voluntary consented to a urinalysis given on 6 September 2005.

g. On 3 October 2005, the applicant was counseled for testing positive for marijuana (THC).

h. On 1 November 2005, she accepted nonjudicial punishment for wrongful use of marijuana. Her punishment included Forfeiture of \$692.00 for two months (suspended, to be automatically remitted if not vacated before 15 December 2005.) 45 days extra duty, and 45 days restriction.

i. The applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) commission of a serious offense. The specific reasons for his proposed recommendation were based upon Summary Court-Martial of the wrongful use of Ecstasy on 12 June 2004 and a Field Grade Article 15 on 7 November 2005 for the wrongful use of Marijuana. The applicant acknowledged receipt of the notification of separation action on the same day.

j. After consulting with legal counsel, he acknowledged:

- the rights available to her and the effect of waiving said rights
- she may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to her

- she may apply to the Army Discharge Review Board or the ABCMR for upgrading
- she elected not to submit matters

k. On 7 December 2005, the immediate commander-initiated separation action against the applicant for commission of a serious offense. The intermediate commander recommended approval that her period of service be characterized as general, under honorable conditions.

l. On 9 December 2005, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. She would be issued a general, under honorable conditions characterization of service.

m. On 16 December 2005, she was discharged from active duty with a general, under honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 2 years, 7 months, and 17 days of active service with no lost time. She was assigned separation code JKK and the narrative reason for separation listed as "Misconduct (Drug Abuse)," with reentry code 4. It also shows she was awarded or authorized the following:

- German Armed Forces Efficiency Badge Bronze
- Army Commendation Medal
- National Defense Service Medal
- Army Service Ribbon
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

4. On 30 January 2014, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from 'General Under Honorable Conditions' to 'Honorable'. She indicated that her discharge was related to PTSD, Other Mental Health, Sexual Assault/Harassment and Substance Abuse. Her case was previously reviewed by the Army Discharge Review Board 29Jan2014.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army Reserve 28Feb2003. She entered the first period of active service 30Apr2003. Her MOS was 98J10 Electronic Intelligence Interceptor/Analyst. She was deployed in Iraq from 20040225 to 20050302. She was discharged 16Dec2005 under provisions of AR 635-200, para 14-12c(2) for misconduct (drug abuse). She was convicted by Summary Court-Martial on 12Jun2004 of the wrongful use of Ecstasy on 12Jan2004 and she received another Field Grade Article 15 for wrongful use of Marijuana on 07Nov2005. Her service was characterized as Under Honorable Conditions, General.

3. Brief summary of pertinent mental health records and related while in service.

a. 27Jun2005 Report of Mental Status Evaluation showed normal behavior and thinking process/content. Mood or affect was unremarkable, and memory was good. She was deemed mentally responsible; she could understand and participate in administrative proceedings. Clinical evaluation by the BH specialist indicated the applicant was not suffering from a psychiatric disease or defect that would cause significant impairment in judgement or reliability. She was cleared for chapter 14-12c separation.

b. On 29Sep2005, the applicant was seen for report of stress due to the following: Work related, interaction with family and health related. Her mood was depressed, and affect was tearful. There was no suicide ideation.

c. She was seen for triage on 16Nov2005 for the Alcohol and Drug Abuse Prevention and Control Program and then for follow-up on 18Nov2005.

d. 28Nov2005 Counsel Center Psychology. The applicant expressed anxiety over uncertainty as to whether she was going to undergo chapter separation or be allowed to re-class. She no longer had the security clearance needed for her current MOS due to the drug charge. Diagnosis: Adjustment Disorder with Anxiety and Depressed Mood.

4. While in service, the applicant was seen for the following notable physical conditions: She had right leg pain that was ruled out for stress fracture by film on 30Jul2003. She was also evaluated for abdominal pain on 01Sep2005. The pelvic ultrasound revealed a possible ruptured left ovarian cyst. Repeat ultrasound showed this was resolved on 16Nov2005. And finally, she had one visit for low back strain on 27Oct2005.

5. During the 09Aug2014 Initial PTSD DBQ, the applicant reported the following stressors: While in Iraq, there was a mortar attack while at her FOB; she witnessed the death of a pregnant suicide bomber; and during AIT she was sexually assaulted by a drill sergeant. She had a hard time dealing with the MST incident and confided in her roommate at the first duty station. The roommate introduced her to drugs which helped make the pain go away. Prior to joining the service, the applicant reported that she did not drink; however, she started smoking cigarettes at age 17. She also experimented with marijuana. After discharge from service, she received 2 DUIs, lost her license and was jailed. She was also arrested for drug possession. She failed out of court ordered treatment due failure to stay sober. She finally quit substance use when she wanted to get pregnant. Diagnoses: PTSD and MDD, Single Episode.

6. With regard to the discharge upgrade request, Liberal Consideration guidance was considered. JLV search showed the applicant was 100% service connected by the VA for PTSD. Under Liberal Consideration, the PTSD condition is mitigating for the drug offence which led to the applicant's court-martial and discharge for misconduct. There was no indication that the applicant's physical conditions contributed substantively to the reason for discharge.

7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with PTSD, MST and MDD which are mitigating conditions/experiences.

(2) Did the condition exist, or did the experience occur during military service? Yes. Her PTSD is related to both combat stressors and MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Substance abuse (marijuana and Ecstasy) for self-treatment is a common sequela of PTSD. In addition, as per ARBA policy the Board may consider discharge upgrade to Honorable and change in narrative reason for separation to Secretarial Authority due to the applicant's self-assertion of MST.

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 prior to a pattern of illegal drug use and the applicant's military record being void of any medical documentation related to post- traumatic stress disorder (PTSD), sexual assault/harassment and or other mental health issues/conditions at the time of her military service, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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.

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 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.

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.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

5. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. 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.

6. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

//NOTHING FOLLOWS//