

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240006201

APPLICANT REQUESTS: an upgrade of her general, under honorable conditions discharge to an honorable discharge.

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)
- Department of Veteran Affairs (VA) Disability Rating Printed Screen

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 in effect, she is currently 100% disabled for post-traumatic stress disorder (PTSD) due to military sexual assault (MST). She believes it is due to her service in Korea and Operation Iraqi Freedom (OIF). She was diagnosed a year and a half ago. Upon return from OIF, she completely lost her mind. She was convicted of a civilian crime for bouncing a check and then discharged from the U.S. Army. The trauma she suffered led up to the events which led to her discharge. Prior to the assault she was a great Soldier and she served with honor. She deserves an honorable discharge for all she lost and suffered.
3. The applicant provides a printout from the VA which shows she received a service connected rating of 100% for PTSD, among other ratings, and has a combined disability rating of 100%.
4. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 9 May 2002.

b. The applicant's Enlisted Record Brief shows her foreign service locations include:

- Korea from 8 December 2002 to 27 December 2003
- Iraq from 13 March 2004 to 3 March 2005

c. Five DA Forms 4187 (Personnel Action) show her duty status changed as follows:

- 26 June 2006 – present for duty (PDY) to absent without leave (AWOL)
- 27 July 2006 – AWOL to dropped from rolls (DFR)
- 22 November 2006 – DFR to PDY
- 11 December 2006 – PDY to AWOL
- 19 December 2006 – AWOL to DFR

d. A DD Form 458 (Charge Sheet) shows charges were being preferred on the applicant two specifications of AWOL.

e. On 3 April 2008 the applicant was apprehended by civilian authorities and returned to military control.

f. On 15 May 2008, in the State of TX, Bell County, the applicant pled guilty to theft for over \$1,500.00 but less than \$20,000.00; and forgery. Her punishment for each conviction consisted of one year in a state jail, to run concurrently.

g. On 16 July 2008:

(1) The commanding general Colonel G\_\_\_\_, informed the applicant in accordance with AR 600-8-19 (Enlisted Promotions and Reductions), she was reduced from the grade of private first class (E-3) to private (E-1); and had the right to appeal within 30 days, if the reduction was erroneous.

(2) The applicant provided a letter, which indicated she was being separated under AR 635-200, Chapter 14, paragraph 14-12c (Commission of a Serious Offense); she had been a victim of sexual assault; the Chapter 14 was not a result of the sexual assault; the report was not filed within the past 24 months.

h. On 10 December 2008, the applicant completed a Report of Mental Status Evaluation, the physician noted no evidence of symptoms of PTSD or traumatic brain injury (TBI). The applicant had the mental capacity to understand and participate in proceedings, she was mentally responsible, and met the retention requirement of Chapter 3, AR 40-501 (Standards of Medical Fitness) and did not have an unfitting diagnosis that would require a medical evaluation board.

i. On 20 February 2009, the applicant's immediate commander notified the applicant on of his intent to separate her under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-5, conviction by a civil court. The specific reasons for separation were based on her 7 May 2008 apprehension by civilian authorities. On 15 May 2008 she was convicted by civilian court for two counts of theft over \$1,000.00, but less than \$20,000.00 and sentenced to be confined in state prison for two years. The commander recommended the applicant receive a general, under honorable conditions discharge.

j. On 20 February 2009, after consultation with legal counsel, she acknowledged:

- the rights available to her and the effect of waiving said rights
- she may encounter substantial prejudice in civilian life if general, under honorable conditions discharge is issued to her
- she may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- she may apply to the ADRB or the ABCMR for upgrading

k. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14-5, prior to the expiration of her term of service. Additionally recommending her characterization of service be characterized as under honorable conditions (General).

l. On 4 April 2009, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-5, for conviction by a civil court. He further directed the applicant be furnished a general, under honorable conditions discharge.

m. On 18 March 2009, she was discharged from active duty with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 4 years, 2 months, and 19 days of net service with 965 days of lost time. She was assigned separation code JKB and the narrative reason for separation listed as "Misconduct (Civil Conviction)," with reentry code 3. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one campaign star
- Army Service Ribbon
- Overseas Service Ribbon

5. A letter issued by the Criminal Investigation Division, 19 November 2024, shows a search of the Army crime file indexes, utilizing the information provided revealed no sexual assault investigation pertaining to the [applicant].
5. On 19 November 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding MST and no records were found.
6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.
7. By regulation, an individual will be considered for discharge and the case initiated and processed through the chain of command to the general court-martial convening authority when initially convicted by civil authorities, or action is taken which is tantamount of a finding of guilty.
8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.
9. MEDICAL REVIEW:
  - a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under honorable conditions (general) to honorable. She contends she experienced an undiagnosed mental health condition, including PTSD resulting from sexual assault/harassment (MST), that mitigates her misconduct.
  - 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 9 May 2002. She was stationed in Korea from 8 December 2002 until 27 December 2003, and she deployed to Iraq from 13 March 2004 until 3 March 2005.
    - A Charge Sheet shows charges were preferred against the applicant for two specifications of AWOL in July 2006 and December 2006.
    - On 15 May 2008, in the State of TX, Bell County, the applicant pled guilty to theft (for over \$1,500.00 but less than \$20,000.00) and forgery. Her punishment for each conviction consisted of one year in a state jail to run concurrently.
    - On 20 February 2009, the applicant's commander notified the applicant of his intent to separate her under the provisions of AR 635-200, Chapter 14-5, conviction by a civil court.

- The applicant was discharged on 18 March 2009 and completed 4 years, 2 months, and 19 days of net service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she experienced sexual assault, which resulted in a diagnosis of PTSD, and she attributes her behavior and misconduct to this experience. VA documentation showed the applicant is 100% service connected for PTSD and Mood Disorder. A Report of Mental Status Evaluation dated 10 December 2008 showed that the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention standards, and it was noted that there was no evidence of symptoms of PTSD or Traumatic Brain Injury (TBI). There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed a chapter 14 mental status examination on 29 November 2006 where the applicant reported she tested positive on a urinalysis and had been AWOL for five months, and it was noted that she "was happy to be getting out of the Army." She was psychiatrically cleared for administrative separation. She initiated care with the VA in December 2009, and she reported mild symptoms of anxiety and depression but indicated an experience of sexual harassment by her first sergeant, so she was referred to mental health. An evaluation was conducted but no diagnosis was rendered. Her next encounter with VA mental health was in July 2022, and she reported significant anxiety, sleep difficulty, and a history of self-harming behaviors (i.e. cutting), and she reported in-service trauma including sexual assault, witnessing mortar attacks, and the deaths of four friends while deployed. She was diagnosed with PTSD and started on an antidepressant and a medication used for anxiety and sleep. She has primarily engaged in medication management, and at her most recent visit on 10 July 2024 she was continued on an antidepressant, two medications for sleep, and medications for nightmares and anxiety.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that fully mitigates her misconduct. There are no mental health records from her time in service, but she has been diagnosed with service-related PTSD. There is a nexus between being AWOL and PTSD, but there is no nexus between her misconduct related to theft and forgery and any mental health condition.

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, including PTSD, at the time of the misconduct. There were no mental health records from her time in service, but VA documentation in December 2009 showed she reported symptoms of anxiety and depression as well as MST. In 2022 she was diagnosed with PTSD, and she is 100% service connected for this condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition on active service, the applicant asserts a fully mitigating BH experience, MST, and she has been diagnosed with PTSD and is 100% service connected for this condition. Because there is an association between MST and avoidant behavior, such as going AWOL, there is a nexus between her experience of MST and her offense of being AWOL. However, there is no nexus between PTSD/MST and her misconduct related to theft and forgery: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) her asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends she was experiencing a mental health condition or an experience that mitigates her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency consideration for requesting upgrade of her discharge characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that fully mitigates her misconduct. There are no mental health records from her time in service, but she has been diagnosed with service-related PTSD. There is a nexus between being AWOL and PTSD, but there is no nexus between her misconducted related to theft and forgery and any mental health condition

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3. The Board determined the applicant's record is absent in-service mitigating factors to support her contentions for an upgrade to honorable. The Board noted the applicant has been diagnosed with PTSD and is 100% service-connected for this condition, there is insufficient evidence beyond her own self-report that she was experiencing a mental health condition during her period of active service. The association between military sexual trauma (MST) and avoidant behaviors such as AWOL is acknowledged, and a nexus between her MST and AWOL offenses is reasonably established. However, her misconduct involving theft and forgery cannot be reasonably attributed to PTSD or MST.

4. The Board determined based on the medical opine, the applicant's mental status evaluation conducted in December 2008 found her mentally responsible and fit for retention, with no evidence of PTSD or TBI at that time. The applicant's civil convictions for theft and forgery, which formed the basis for her separation under Chapter 14, paragraph 14-5, were serious offenses that undermine the integrity and discipline expected of military personnel. While her service includes deployments to Korea and Iraq, and she has faced significant personal challenges, the record does not support an

upgrade to Honorable Discharge. Her discharge as General, Under Honorable Conditions remains appropriate given the nature and circumstances of her misconduct. Therefore, relief is denied.

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 (Active Duty Enlisted Administrative Separations), 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 14-5 of the regulation states an individual will be considered for discharge and the case initiated and processed through the chain of command to the general court-martial convening authority when initially convicted by civil authorities, or action is taken which is tantamount of a finding of guilty.

3. 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 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.

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 PTSD; 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.

6. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

//NOTHING FOLLOWS//