

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006309

APPLICANT REQUESTS: an upgrade of her under honorable conditions (general) character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 30 September 2022

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 is requesting a discharge upgrade due to her VA rating and findings of sexual harassment, post-traumatic stress disorder (PTSD), and military sexual trauma (MST).

a. While in service, sexual harassment occurred often, which led her to self-medicate by substance abuse. She used alcohol and drugs to numb herself and remove herself from situations, which resulted in a positive drug test. The sexual harassment interfered with her performance and self-confidence. Alcohol was the reason for all of her non-judicial punishments (NJPs) under Article 15, Uniform Code of Military Justice (UCMJ), and demotions. Prior to this all, she was a great Soldier. She completed the Airborne and Air Assault Courses, had Expert Marksmanship Qualification Badges, and always had a score of 300 on the Army Physical Fitness Test.

b. She reflects back to when she was enlisted and often wishes there was support for all of the incidents. She suffered in silence dealing with things alone. She even went through an abortion alone. It took her years to realize she endured MST in the military. Sexual harassment and sexual assault did occur during her enlistment, and she has to face those memories today as a Veteran.

3. The applicant provides a VA Rating Decision showing she was granted a 70 percent service-connected disability rating for PTSD related to MST effective 6 March 2022.
4. On 20 June 1997, the applicant enlisted in the Regular Army in the rank/grade of private 2/E-2. After completing initial entry training, she was awarded military occupational specialty 77F (Petroleum Supply Specialist) and assigned to duty at Fort Campbell, KY. She was advanced to private first class/E-3 effective 1 April 1998, and advanced to specialist/E-4, the highest grade she held, effective 5 September 1999.
5. On 22 September 1999, the applicant was honorably discharged to immediately reenlist, and she reenlisted the following day.
6. On 12 July 2002, her commander was notified the applicant had provided a urine sample that tested positive for MDMA (commonly known as ecstasy) and cocaine.
7. On 13 July 2002, her commander counseled her to notify her of her positive urinalysis. Her commander advised her she was being removed from her assignment, she was to be flagged and barred from reenlistment, and her security clearance would be processed for revocation. She would also be processed for UCMJ action and her permanent change of station orders to Korea had been suspended indefinitely. Her commander further advised her she could be processed for administrative separation.
8. On 8 August 2002, the applicant accepted NJP under the provisions of Article 15, UCMJ, for wrongfully using cocaine and MDMA on or between 29 June 2002 and 1 July 2002. Her punishment was reduction to private first class/E-3 and extra duty for 45 days.
9. On 26 August 2002, a Counselor and the Clinical Director, Fort Campbell Community Counseling Center, provided the applicant's commander with a synopsis letter/case summary.
 - a. The applicant had been command-referred to the Community Counseling Center on 24 January 2002 based on an incident of driving under the influence, which was her second charge of driving under the influence. She was screened on 12 February 2002 and met the diagnostic criteria for alcohol dependence. She was enrolled into the outpatient counseling program and given conditions of her enrollment that included attending scheduled groups, maintaining absolute sobriety, no further alcohol or drug related incidents, and successful completion of counseling. The applicant was advised that failure to comply with the treatment plan could result in serious disciplinary actions, to include administrative separation proceedings.

b. Since her enrollment, the applicant attended counseling on a regular and consistent basis. She also reported attendance at Alcoholics Anonymous meetings, and she reported abstinence from alcohol.

c. On 17 July 2002, the applicant reported she had tested positive for cocaine and ecstasy.

d. The summary concluded that it was evident the applicant had failed to comply with major aspects of her treatment plan and could be declared a rehabilitation failure and the unit could initiate separation proceedings. In the authors' professional opinion, the applicant did not appear to have benefited from available Army intervention and she seemed unmotivated to deal with her substance abuse problems. With her behavior, the applicant did pose a threat to the good order of the unit and the welfare of others in her community, and she was at risk for further incidents.

10. A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows a flag was initiated effective 19 September 2002 due to a field-initiated elimination action.

11. On 20 September 2002, her commander notified her he was initiating action to separate her for alcohol or other drug abuse rehabilitation failure under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 9. The commander stated the reason for the proposed action was the determination that, after consultation with her rehabilitation team, she was an alcohol or other drug abuse rehabilitation failure. He advised her he was recommending she receive an under honorable conditions (general) discharge. He also advised her of her right to consult with counsel, to submit written statements in her behalf, and to obtain copies of documents that would be sent to the separation authority. On 26 September 2002, the applicant acknowledged receipt of the notification.

12. On 30 September 2002, the applicant's commander submitted his recommendation that the applicant be separated under the provisions of Army Regulation 635-200, chapter 9, with service characterized as under honorable conditions (general).

13. On 3 October 2002, the separation authority approved the immediate separation of the applicant with service characterized as under honorable conditions (general).

14. On 10 October 2002, the applicant was discharged in the rank/grade of private first class/E-3 after completing 5 years, 4 months, and 9 days of net active service. The DD Form 214 (Certificate of Release or Discharge from Active Duty) issued at that time shows the following:

- Block 13 (Decorations, Medals, Badges...) – her awards include the Army Achievement Medal, Army Good Conduct Medal, Parachutist Badge, Air Assault Badge, and Driver and Mechanic Badge
- Block 24 (Character of Service) – under honorable conditions (general)
- Block 25 (Separation Authority) – AR 635-200, chapter 9
- Block 28 (Narrative Reason for Separation) – drug rehabilitation failure

15. 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.

16. 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 to honorable. She contends she experienced an undiagnosed mental health condition, PTSD, and was subjected to MSTs 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 20 Jun 1997 and reenlisted on 23 Sep 1999.
- The Applicant was command-referred to the Community Counseling Center on 24 Jan 2002 for a second DUI and was enrolled in an outpatient counseling program.
- The applicant received NJP preferred against her on 8 Aug 2002 for wrongful use of cocaine and MDMA between 29 Jun and 1 Jul 2002.
- Due to the drug charges, applicant was deemed a rehabilitation failure and her Commander initiated separation action against her on 20 Sep 2002.
- She was discharged the second time on 10 Oct 2002, and she was credited with 5 years, 4 months and 9 days of net active service.

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 resorted to alcohol and drug use to self-medicate and numb out due to sexual harassment and sexual assault (MST) she experienced while on active duty. A Report of Medical History, dated 23 Aug 2002, indicated positive responses in section 17 for receiving any type of counseling and use of illegal drugs, and a Report of Medical Examination on the same date showed no indication of psychiatric symptoms but noted a history of illegal drug use and completion of ADAPC in Aug 2002. A synopsis letter from the Community Counseling Center (26 Aug 2002) indicated applicant was referred for a second DUI. She followed program requirements until she

tested positive for cocaine and ecstasy on 17 Jul 2002. She was subsequently considered a rehabilitation failure and was recommended for separation from the Army. She met the criteria for an Alcohol Dependent diagnosis. A Department of Veterans Affairs, VA Benefits Administration (30 Sep 2022) letter indicated a Rating Decision of 70% service-connected disability for PTSD related to MST. There was insufficient evidence that the applicant was diagnosed with a behavioral health condition, aside from Alcohol Dependence, 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 VA mental health services on 05 May 2023, and she reported working with a VA provider on her PTSD from childhood, military and interpersonal relations. She also claimed considerable depressed mood and PTSD symptoms mainly associated with a Dec 2021 carjacking. She reported PTSD symptoms to include trouble sleeping, hypervigilance, nightmares and intrusive memories. The provider diagnosed her with PTSD and Anxiety Disorder Unspecified. She was referred to community care for treatment, but those records are not viewable through JLV.

e. An Initial PTSD Disability Benefits Questionnaire (13 Aug 2022) showed the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD. In-service related trauma exposure included threat of assault by a sergeant she was dating; being taken to a private room by a drill sergeant, who was verbally inappropriate, and threatened with sexual assault; and witnessing a woman in the Army being sexually assaulted by multiple men and being prevented from helping. The applicant also experienced and witnessed exposure to human remains and child abuse details.

f. 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 had a condition or experience that mitigates her misconduct.

g. 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 during her time in service. DoD documents indicate she was diagnosed with alcohol dependence during her time in service. VA records show a service-connected disability for PTSD at 70% related to MST and a VA Compensation and Pension examination that demonstrates a strong case of PTSD related to MST.

(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 diagnosis of Alcohol Dependence while on active service. In 2022 she was diagnosed with PTSD resulting from MST by the VA and is service connected for this condition. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Therefore, the applicant’s misconduct related to getting a DUI, using cocaine, and taking MDMA do present a nexus to her assertion of MST. In any case, her assertion of MST alone is sufficient for the board’s consideration.

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 warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy period of honorable service completed prior to any misconduct, the misconduct involved and the mitigation found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant’s characterization of service to Honorable.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions unless the Soldier was in an entry-level status.

5. 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/NR) 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.

//NOTHING FOLLOWS//