

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006594

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her under other than honorable conditions (UOTHC) character of service to honorable, and a new request for correction of her DD Form 214 (Certificate of Release or discharge from Active Duty) to show:

- the narrative reason for her separation changed from “In lieu of Trial by Court-Martial” to “Secretarial Authority”
- and a change to the corresponding separation program designator (SPD) code

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief (14 pages)
- Resume
- Army service records (9 pages)
- DD Form 214, for the period ending 10 July 2000
- DD Form 214, reissued on 19 September 2000
- statements of support (3), dated 31 January 2001 to 18 April 2001
- Army Discharge Review Board (ADRB), Docket Number AR200105657, Case Report and Directive, dated 22 August 2001, and decision letter
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20130006434, Record of Proceedings (ROP), dated 26 November 2013, and Decision Letter
- Statement of Support, S.M., undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130006434 on 26 November 2013.

2. The applicant states her request for reconsideration is made for the purpose of presenting new evidence sufficient to show she suffered a material error and injustice. Her chain of command committed a material error in discretion by indirectly encouraging

her voluntary resignation and by failing to protect her integrity as a victim of sexual assault. Her command's actions, following her allegations of sexual assault, defeated her spirit.

3. Counsel states:

a. The applicant entered active duty after receiving her bachelor's degree in psychology from the U.S. Military Academy, West Point, NY. She was notably the captain of the women's soccer team, where she earned a varsity letter for four years as well as a silver medal on the All-Army Women's Soccer Team. She became a second lieutenant in the aviation branch where she was stationed as a UH-60 (Black Hawk) helicopter pilot. Her work ethic and intelligence was continually noted by her command.

b. After she made allegations of sexual assault, the applicant's chain of command indirectly encouraged her to voluntarily resign by forming a revisionist history of her misconduct based upon her marrying an enlisted member, her history of alleged misconduct, and her report of sexual assault. Her statements and allegations of rape were twisted into personal accounts of sodomy and adultery. The information prompted an adultery investigation, rather than an investigation for assault, which resulted in an expansive charge list and adverse Officer Evaluation Report (OER) comments. She believed the only option she had was to voluntarily resign. If not for her command's errors, she would have received a better characterization of service.

c. Her command demonstrated an overreach of authority when the Criminal Investigation Division (CID) searched her residence, in her absence, without a warrant. She attempted to do the right thing and take responsibility for her actions by resigning. She is repentant about the circumstances which led to her discharge. She has been improperly stigmatized, harmed, and deprived of her honor and good name since her discharge.

d. Following her discharge, she played a role in helping her ex-husband complete his bachelor's and master's degrees and become an officer in the U.S. Army. She had her first daughter, and obtained her master's degree, teaching certificate, and PHD. More recently, she has become the head women's soccer coach, assistant boy's tennis coach, and leader for the Algebra team at J.I.L. High School. She has held the positions of math teacher, assistant bowling coach, and Florida Future Educator of America Chapter leader. She is the Vocational Bible School Coordinator at her church; an independent beauty consultant; and the founder of Spence Sports Elite, LLC, which provides youth athletes with training, camps, skills, and development.

e. She has endured a lasting injustice which has stigmatized her far beyond her military service nearly 24 years ago. Furthermore, she was a victim of sexual assault which requires liberal consideration from this Board.

4. Upon graduating from the U.S. Military Academy, West Point, the applicant was appointed as a second lieutenant/O-1 in the aviation branch and entered active duty in the Regular Army on 3 June 1995.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 22 March 2000. The relevant DD Form 458 (Charge Sheet) shows she was charged with:

- committing sodomy with a specialist (SPC)/E-4 C.S.G., between on or about 25 February 1999 and 30 March 1999
- conduct unbecoming an officer, between on or about 23 November 1998 and 30 December 1998
- wrongfully having sexual intercourse with a private first class/E-3, a man not her husband, between on or about 1 March 1998 and 30 March 1998
- wrongfully having sexual intercourse with SPC C.S.G., a man not her husband, between on or about 25 February 1999 and 30 March 1999
- two specifications of wrongfully and unlawfully subscribing under oath, false statements, indicating that SPC C.S.G. twice attempted to rape her
- knowingly fraternizing with a sergeant (SGT)/E-5, an enlisted person, on terms of military equality, between on or about 1 January 1998 and 30 September 1998
- two specifications of knowingly fraternizing with SPC C.S.G., an enlisted person, on terms of military equality, between on or about 30 March 1999 and 30 December 1999

6. On 29 March 2000, the applicant voluntarily tendered her resignation from the Army, under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), Chapter 3, paragraph 3-13, for the good of the service in lieu of general court-martial. She acknowledged not being subjected to coercion with respect to her resignation; being fully advised by counsel; understanding she may be considered for a UOTHC character of service and may be barred from all rights, based upon her period of service, under any laws administered by the Department of Veterans Affairs. She was afforded an opportunity to present matters in explanation, mitigation, or defense of her case. She elected to remain silent.

7. The applicant's chain of command recommended approval of the requested resignation, further recommending she be issued an UOTHC character of service.

8. An Ad Hoc Review Board convened on 25 May 2000. The Deputy Assistant Secretary (Army Review Boards), Manpower and Reserve Affairs, accepted the applicant's resignation on 30 May 2000, further directing the issuance of an UOTHC character of service.

9. The applicant was discharged in the rank/grade of captain/O-3, on 10 July 2007, under the provisions of Army Regulation 600-8-24, paragraph 3-13, in lieu of trial by court-martial. Her DD Form 214 shows her service was characterized as honorable, with SPD code DFS. She completed 5 years, 1 month, and 8 days of net active service this period. She was awarded or authorized the following:

- Army Achievement Medal (3rd award)
- National Defense Service Medal
- Army Service Ribbon
- Army Aviator Badge
- Air Assault Badge

10. On 19 September 2000, the applicant was administratively reissued a new DD Form 214 showing her character of service as under honorable conditions (general). On 27 September 2000, the applicant was reissued a final DD Form 214 showing her character of service as UOTHC.

11. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of her character of service on 24 August 2001. After careful review, the ADRB determined the applicant's discharge was proper and equitable. Her request for an upgrade was denied.

12. On 26 November 2013, the ABCMR considered the applicant's request for an upgrade of her UOTHC character of service. After careful review, the Board determined the applicant's repetitive misconduct completely diminished the character of her service below that which warrants an honorable or general character of service. She was erroneously issued a DD Form 214 showing she received an honorable character of service. After being notified of the error, Army Personnel Command, mistakenly reissued a DD Form 214 showing she received an under honorable conditions (general) character of service. That office ultimately issued a final DD Form 214 showing she received a UOTHC discharge. This final separation document supersedes the previously issued DD Forms 214. The applicant's request for relief was denied.

13. The applicant provides the following:

- a. A 14-page legal brief, as summarized in paragraph 3 of this Record of Proceedings (ROP).
- b. The applicant's resume shows her education, work experience, military service, and numerous post-service accomplishments from 1995 to present.
- c. Army Service Records are summarized, in pertinent part, in the ROP above. Counsel specifically notes two OERs covering rating periods from January 1998 to

January 1999 and January 1999 to February 2000, which counsel states are examples of the applicant's command practicing "revisionist history." From January 1999 to February 2000, her integrity was the only quality raised during her "satisfactory performance as the Assistant S-3 and Battalion Movement Officer because her personal behavior was unbecoming of an officer. The OER from the previous year, during which time she accumulated all of her 1998 charges, she was found to have "outstanding performance." The applicant's lack of response on her adverse OER shows the applicant believed her command to be slanted against her.

d. In three statements of support, dated 31 January 2001 to 18 April 2001, which were also included with the applicant's application to the ADRB, the authors attest to the applicant's character. She is a hardworking, caring, compassionate individual, who has the innate ability to make those around her feel comfortable. She is well respected by her peers. She is professional and trustworthy as evidenced by being a West Point graduate and Army Aviator. She served her country proudly and should be treated with respect and admiration for her service.

e. In an undated statement of support, the applicant's ex-husband states:

(1) He and the applicant met when he was an enlisted member of the Army, and she was an officer. They were married after only a few months due to the love they had for each other. She sparked his motivation to go to college and become an officer. The stress of the job she held and balancing a marriage affected her state of mind. As a result of such stress, she made some decisions which resulted in her discharge. He believes that because there were other notable mistakes in her military file, investigators had already made their mind up about her; and he should not have allowed an investigator to search their home without a warrant.

(2) Her service was exceptionally meritorious and impeccable up to the time of her investigation. She made a significant impact in her organization as a leader. Her ability to help others made her a good officer and teacher. Today, over 1,000 students have graduated high school because of her, and she has helped countless students achieve their associate degrees. Although they are now divorced, they both strive to do the best for their daughter.

14. The applicant consulted with legal counsel and voluntarily resigned from the Army in writing, under the provisions of Army Regulation 600-8-24, Chapter 3, for the good of the service - in lieu of trial by court-martial. A characterization of UOTHC is authorized and normally considered appropriate.

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to her characterization of service from under other than honorable conditions (UOTHC) to honorable and a new request for correction to her DD Form 214 to show narrative reason for separation as "Secretarial Authority" and a change to the SPD code. She contends she experienced sexual harassment/assault (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 entered active duty in the Regular Army on 3 June 1995.
- Court-martial charges were preferred against the applicant for violations of the UCMJ on 22 March 2000. The Charge Sheet showed charges of: committing sodomy with a specialist, conduct unbecoming of an officer, wrongfully having sexual intercourse with a private first class, wrongfully having sexual intercourse with a specialist, two specifications of wrongfully and unlawfully subscribing under oath false statements, knowingly fraternizing with a sergeant, and two specifications of knowingly fraternizing with a specialist.
- On 29 March 2000, the applicant voluntarily tendered her resignation from the Army, under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), Chapter 3, paragraph 3-13, for the good of the service in lieu of general court-martial.
- The applicant was discharged on 10 July 2007, under the provisions of Army Regulation 600-8-24, paragraph 3-13, in lieu of trial by court-martial. Her DD Form 214 shows her service was characterized as honorable, with SPD code DFS. She completed 5 years, 1 month, and 8 days of net active service this period.
- On 19 September 2000, the applicant was administratively reissued a new DD Form 214 showing her character of service as under honorable conditions (general). On 27 September 2000, the applicant was reissued a final DD Form 214 showing her character of service as UOTHC.

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 that after she made allegations of sexual assault, her chain of command indirectly encouraged her to voluntarily resign by creating a revisionist history of her misconduct. Through counsel she states that she reported a sexual assault to her command, and they failed to protect her integrity as a victim by turning her report into evidence of adultery. She asserts MST as a factor in her discharge. A Request for Private Medical Information dated 26 January 2000 noted the reason for request as "criminal investigation" and need for all medical information pertaining to the soldier and

all sexually transmitted diseases. However, the application did not include any medical or mental health records. 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 no history of mental health related treatment or diagnoses. DoD records do show several medical encounters related to gynecological issues or problems, but discussion of those documents is beyond the scope of this behavioral health provider's expertise.

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 mental health condition while on active service. The applicant asserts MST as a factor in her misconduct, but the application and the narrative do not assert a mental health condition. There is an assertion of medical documentation related to her MST experience, and DoD medical records do show several encounters related to gynecological issues, but discussion of these documents is beyond the scope of this behavioral health provider's expertise.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a potentially mitigating experience, MST, at the time of the misconduct. There are no mental health records during her time in service or post-discharge.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition on active service, the applicant asserts a potentially mitigating BH experience, MST, and given that MST experiences can have an impact on an individual's judgement, personal boundaries, and promiscuity, it is as likely as not that her MST experience influenced her misconduct. Per Liberal Consideration her assertion of MST 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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct involved, the mitigation found within the medical review, and the guidance on liberal consideration, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions. However, the Board found a lack of justification for changing the separation code and/or narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined 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 changing the separation code and/or narrative reason for separation.

//SIGNED//
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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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.
2. Army Regulation 600-8-24 (Officer Transfers and Discharges), in effect at the time prescribed policy and procedure governing transfer and discharge of Army officer personnel.

a. Paragraph 1-16 states an officer pending court-martial charges or investigation with a review toward court-martial will not be separated without Headquarters, Department of the Army approval.

b. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

c. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Chapter 3 (Resignations) of the regulation prescribes the tasks, rules, and steps for processing voluntary resignations). Paragraph 3-13 (Rules for processing resignation for the good of the service in lieu of general court-martial) states an officer may submit a resignation for the good of the service in lieu of general court-martial if court-martial charges have been preferred against the officer with a view toward trial by general court-martial. An officer separated under this paragraph normally receives characterization of service of under other than honorable conditions. An officer who resigns for the good of the service (regardless of the character of service received) is barred from rights under laws administered by the Veterans Affairs based on the period of service from which the officer resigned.

e. Chapter 4 (Eliminations) of the regulation prescribes the process for elimination of an officer in the Army. Paragraph 4-1 (Overview) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Paragraph 2-6 provides the SPDs and narrative reasons for separation that are applicable to officer personnel. It shows, in part, SPD DFS is the appropriate code to assign to an officer who is separated due to resignation in lieu of trial by court-martial. KFF is the appropriate SPD to assign to officers who are voluntarily discharged under Secretarial authority.

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 post-traumatic stress disorder; 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. 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.

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, 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.

//NOTHING FOLLOWS//