

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240006639

APPLICANT REQUESTS: correction of her service record to reflect the following:

- an upgrade of her under other than honorable conditions discharge to honorable
- restoration of rank to private (PV2)/E-2 with applicable back pay and benefits
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Separation Packet
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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:

a. While stationed in Seoul, South Korea she was sexually assaulted by her direct supervisor, a chief warrant officer. He was tried and found guilty by court-martial, and he was allowed to stay on base despite the charge. She immediately sought mental health treatment but received unsupportive backlash which resulted in an immediate stop to all treatment after her first visit. She was harassed by others in the unit and on post causing her to request a transfer to another duty station to avoid any further trauma and losing an assignment that offered the ability to advance and further her military career.

b. Upon arriving at her new duty station at Fort Meade, Maryland the rumors quickly spread of the court-martial which caused her to receive constant harassment. This

resulted in her creating unhealthy relationships in her personal life, influenced her decision making at the time, and increased the overall trauma she endured.

c. Since the initial sexual assault her mental health has suffered leading her to emotional imbalances in her behavior both personally and professionally. She has endured situations that have led to additional sexual harassment, assault, and even rape. Although she cannot go back to repair the damage done, she is requesting her discharge be upgraded to allow her to receive much needed benefits.

3. A review of the applicant's available service record reflects the following:

a. On 16 November 1999, she enlisted in the Regular Army.

b. She was awarded the Army Good Conduct Medal by way of Permanent Orders Number 28-23 for the period of service covering 16 November 1999 – 15 November 2002.

c. A DD Form 458 (Charge Sheet) shows on 13 August 2003, court-martial charges were preferred on the applicant for the following:

- Violation of Article 107 (False Official Statement)
- Violation of Article 111 (Drunken Operation of a Vehicle)

d. On 22 August 2003, after consulting with legal counsel she requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. She acknowledged:

- maximum punishment
- she was guilty of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other than honorable conditions
- she would be deprived of many or all Army benefits, she may be ineligible for many or all benefits administered by the Veterans Administration
- she may be deprived of his rights and benefits as a Veteran under both Federal and State law
- she may expect to encounter substantial prejudice in civilian life
- she elected to submit a rebuttal statement

e. On 2 September 2003, the applicant pleaded to receive a general discharge as opposed to an under other than honorable conditions discharge. She indicated she was in counseling and had been since June 2003 due to many traumatic experiences that she attempted to handle at the lowest level. She realized she could not deal with it on

her own and elected to seek professional help. She was stationed in Korea from July 2000 to 2001 where a warrant officer was charged with rape, sodomy, attempted kidnapping, and indecent assault and she was the victim. She loved the military and planned on making it a career; however, she still has nightmares to date and the challenges have caused significant issues in her personal life and career. The applicant outlined additional events in her life and concluded by saying she was hopeful she could put the past behind her, but the nightmares made her feel like she was repeatedly being raped. Despite the challenges in the Army, she did not regret joining, she received great support from her leadership in the past. She apologized for her poor judgement that led to the offenses she was charged with.

f. The separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. She would be separated with an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

f. On 18 September 2003, she was discharged from active duty with an under other than honorable conditions characterization of service for "In Lieu of Trial by a Court-Martial.". Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 3 years, 10 months, and 3 days of active service with no lost time. It also shows she was awarded or authorized:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Marksman Marksmanship Qualification Badge with Grenade Bar

4. On 19 December 2024, the Criminal Investigation Division (CID), Chief, Freedom of Information Act/Privacy Act Division provided a sanitized Law Enforcement Report pertaining to a sexual assault incident of the applicant while stationed in Seoul, South Korea.

5. A review of the applicant's record confirms she is eligible for awards that are not recorded on her DD Form 214. The entries will be added to her DD Form 214 as administrative corrections and will not be considered by the Board.

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 who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable

discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

#### 8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable and restoration of rank to private (PV2) E-2 with applicable back pay and benefits. Restoration of the applicant's rank is outside of the scope of this Advisory and will not be addressed. On her DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), Sexual Assault/Harassment, and Reprisal/Whistleblower concerns are related to her request. More specifically, the applicant indicated that her direct line supervisor was found guilty of sexual assault though was able to discharge instead of going to prison and was allowed to remain on base, to which she said she experienced harassment from him and other supervisors/coworkers. She also indicated that rumors of the court-martial spread at her new duty station which also resulted in constant harassment. 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: 1) the applicant enlisted in the Regular Army (RA) on 16 November 1999, 2) She was awarded the Army Good Conduct Medal for the period of service from 16 November 1999 to 15 November 2002, 3) DD Form 458 shows on 13 August 2003 court-martial charges were preferred against the applicant for making a false official statement and drunken operation of a vehicle, 4) On 02 September 2003, the applicant pleaded to receive a general discharge as opposed to an under other than honorable conditions discharge. She indicated she had been in counseling since June 2003 due to a history of traumatic experiences that have occurred since 2000. The applicant further stated she still had nightmares and that the "challenges have caused significant issues in her personal life and career." 5) The applicant was discharged on 18 September 2003 under the provisions of Army Regulation (AR) 635-200, Chapter 10, In Lieu of Trial by a Court-Martial, 6) On 19 December 2024, the Criminal Investigation Division (CID), Chief, Freedom of Information Act/Privacy Act Division provided a sanitized Law Enforcement Report pertaining to a sexual assault incident of the applicant while stationed in Seoul, South Korea. The date of the enclosed memorandum detailing the investigation was dated 06 December 2000.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 10 October 2001 through 11 September 2003. Post-discharge medical notes through military treatment facilities (MTF) were available for review from 18 December 2003 through 24 March 2007. The applicant underwent a CT scan of the brain on 21 November 2001. The impressions show 1) "fracture along the junction of the right maxilla and nasal bone with disruption of the medial wall of the right nasolacrimal duct" and 2) "right blow-out fracture without obvious entrapment of right orbital structures. There is no obvious orbital emphysema." In the findings section it was noted that the imaging of the brain appeared to be within normal limits (WNL) (i.e., without evidence of mass, mass effect, or shift of midline structures. The ventricles and cisternal spaces were normal and no intracranial hemorrhage was observed). She had a follow-up CT scan of the brain on 29 November 2001 with the purpose of the imaging noted as being two weeks status-post motor vehicle accident (MVA) with continued and more severe headaches as well as a syncopal episode in the shower. The impressions show 1) "no evidence of an acute bleed, mass, or mass effect," and 2) "questionable fracture of the right inferior anterior maxillary sinus." She underwent an MRI of the brain on 19 December 2001 citing her history of right facial trauma secondary to MVA and indicating she had several episodes of loss of consciousness (LOC). The impressions show that there was no evidence of intra or extracerebral hemorrhagic or ischemic changes. MRI and MRA findings of her brain and neck on 21 December 2001 shows there were no significant findings though it was noted that there was "some abnormality within the right vertebral artery on one of the two MRA sequences obtained." It was noted that this finding may be an artifact though dissection could not be ruled out. It was recommended that if the applicant has a history of trauma to the right side of the neck and vertebral artery dissection remained a possibility that she may require conventional angiography for confirmation. There were no BH-related encounters available for review via JLV.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that her UOTHC discharge renders her ineligible for VA clinical services.

e. The applicant's DD Form 458 (Charge Sheet) dated 13 August 2003 shows the charges as they pertain to making a false official statement. Review of the specifications shows statements pertaining to pregnancy, issuance of a physical profile by a medical professional, recommendation for convalescent leave, and an initial pregnancy screening. The date(s) of the statements were documented to have occurred between 02 August 2002 and 01 September 2002.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a potentially mitigating condition or experience in-service, MST. This Advisor would contend that the applicant's misconduct is partially mitigated.

## g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends her discharge was related to MST, PTSD, and TBI.

(2) Did the condition exist or experience occur during military service? Yes, records show a history of MST. She also contends her discharge was related to PTSD and TBI.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical documentation supporting her assertion of PTSD or TBI. Records obtained from CID and the applicant's statements during her separation processing show a history of MST. Excessive alcohol use is a natural sequela to many conditions, to include trauma, and is a common form of coping used to avoid and mask symptoms. As there is an association between excessive alcohol use and trauma, there is a nexus between the applicant's experience of MST and misconduct of drunken operation of a vehicle. However, MST does not interfere with the ability to distinguish between right and wrong and adhere to the right and making false official statements is not part of the natural history and sequelae of MST as it pertains to incidents unrelated to the index trauma. As such, BH is partially supported.

h. Regarding applicant's assertion of PTSD and TBI, while there is no evidence to support these diagnoses, the applicant's self-assertion of PTSD and TBI alone merits consideration by the board.

**BOARD DISCUSSION:**

1. 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 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's request, available military records, and medical review, the Board considered the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a potentially mitigating condition or experience in-service, MST. This Advisor would contend that the applicant's misconduct is partially mitigated.

## 2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends her discharge was related to MST, PTSD, and TBI.

(2) Did the condition exist or experience occur during military service? Yes, records show a history of MST. She also contends her discharge was related to PTSD and TBI.

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3. The Board acknowledged the advising opine that there is a nexus between the applicant's experience of MST and her misconduct involving alcohol use, which is a recognized coping mechanism for trauma. While this supports partial behavioral health mitigation, the Board concurs with the medical opinion that MST does not impair the ability to distinguish right from wrong, and that making false official statements is not a natural sequela of MST, particularly when unrelated to the index trauma. The Board noted, the applicant's service record, which includes nearly four years of active duty, overseas service in Korea, and multiple awards, including the Army Good Conduct Medal. The Board also recognized her personal statement submitted at the time of separation, in which she described traumatic experiences, including being the victim of sexual assault while stationed in Korea. A sanitized CID report confirms the existence of a sexual assault incident involving the applicant.

4. The Board agreed, given the applicant's credible account of MST, her length of service, her awards, and that her overall record and circumstances warrant partial relief. The Board granted partial relief by upgrading her characterization of service to general,

under honorable conditions. However, the Board found no basis to restore her rank, as the reduction was part of the approved separation under Chapter 10.

5. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 her characterization of service as under honorable (general) conditions.

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 restoration of rank to private (PV2)/E-2 with applicable back pay and benefits

//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.

ADMINISTRATIVE NOTE(S):

A review of the applicant’s service records shows she is authorized awards not annotated on her DD Form 214. As a result, amend her DD Form 214 to show:

- Korea Defense Service Medal
- Global War on Terrorism Service Medal

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. 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. 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service/in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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 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.

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 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.

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/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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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//