

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240006666

APPLICANT REQUESTS: reconsideration of her previous request for upgrade of her DD Form 214 (Certificate of Release or Discharge from Active Duty) with corrections to the following:

- Item 24 (Character of service): to show honorable or under honorable conditions
- Item 26 (Separation Code): from "KFS" to "KNL"
- Item 27 (Reentry Code): from "4" to "2"
- Item 28 (Narrative Reason for Discharge): from "In Lieu of Trial by Court-Martial" to "Good of the Service"

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Congressional letter, 23 January 2024
- Self-authored letter
- Character letter, [REDACTED]
- Character letter, [REDACTED]
- Character letter, [REDACTED]
- COMHAR documents (6 pages)
- [REDACTED] Unofficial Transcript

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 AR20180007216 on 8 January 2020.
2. The applicant states she wants consideration of her discharge upgrade from other than honorable to either honorable or under honorable conditions (general), due to admission of guilt and apology of absent without leave (AWOL), new supporting documents of mental health, and the repeal by Congress on 20 September 2011,

concerning the Don't Ask, Don't Tell (DADT) policy. Demonstrated mental health issues in supporting documents that give a clear example of previous concerns while serving, the supporting documents also exhibit harassment during serving for sexual orientation, and an apology and admission of guilt for not completing service obligation. In a self-authored letter the applicant states:

- a. She enlisted in the Army at 18 years old at the beginning stages of adulthood. She was unaware of what she was getting herself into, but she was aware that she was taking a step to better her life and serve her country. She did very well in basic training in Fort McClellan, AL and was selected to undergo advanced reconnaissance and surveillance training as a Chemical Operations Specialist (54B) afterwards before she was sent to Korea for her first overseas tour. While in Korea she experienced culture shock because she had never lived in a different country before. She got into quite a bit of trouble while there because she liked to drink and at the time, she was not of legal age to do so.
- b. Once her superiors became aware that she was a lesbian, she experienced even greater eye of scrutiny and harassment regarding that. She was often threatened to severe relationships that they had grown privy too, so her stay there became somewhat an uncomfortable situation as she tried to remain inconspicuous. She was only left alone momentarily, after she gained knowledge that her married Sergeant Major was having an affair with her best friend who was the same rank as herself and was pregnant. Once he knew the applicant knew, she began to not have any further issues. Her plan was to do another tour in Korea, but her family wanted her to come back to the states, so her original duty station was Fort Riley, KS but she asked for a change and was sent to Fort Hood, TX.
- c. The worst thing she could have done was go to Fort Hood because her plans to do well were derailed when she arrived there. She battled the same harassment about her sexuality in Fort Hood as she did in Korea. She also unfortunately experienced an unwanted sexual encounter with a male that she did not share with anybody at the time because there was no one to tell that she trusted. She battled with alcohol and became entangled in financial troubles that heightened every aspect of her life there.
- d. She is guilty of going AWOL twice. The first time was because she did not have the support from her superiors that she needed and when she returned things never got any better. She tried to get things together the best way she knew how at 19 years old, but her way only made every situation worse because she had no experience managing adult affairs. Still with no support, she became mentally exhausted and is guilty of going AWOL the second time with her superiors trying to get her to come back offering to help her situation, but she did not see the situation getting any better at the time with her demotion in rank and mitigating financial circumstances.

e. The entire time she was battling depression and alcoholism to cope with the situations that she faced. The amount of harassment and scrutiny she experienced at Fort Hood was just unbearable at the time. She made a conscious decision to go to Fort Sill, OK and be out processed out of the military voluntarily towards the end of 2000 and at the time it was the only solution she could see fit. She was so focused on just getting out, she did not think she was fully educated on how giving up her GI Bill and being under other than honorable conditions would affect her. She blindly signed away to just get out thinking it would be no big deal and it was. She did mention during the out processing that the reasons for her wanting to get out was because of her sexuality and harassment from her fellow soldiers and superiors, but "Don't Ask, Don't Tell" was still upheld during that time, so it went on deaf ears.

f. If she had to do it over again, she would have stuck it out because she only had less than six months to get out, but her situation was so dire she chose that option. She was unaware that she was dealing with trauma from her experiences and post-traumatic stress disorder, so she did what she thought was best. She was discharged officially 14 February 2001, months before the September 11th attacks. She wished she had not gotten out as she so wanted to be a part of helping to defend her country, but of course that was no longer an option because her reentry code disabled her from rejoining. Since being out of the military she has continued to battle with alcohol and mental health issues, but through it all she managed to obtain her Bachelor of Science degree in Criminal Justice and a Master of Science in Administration of Justice and Security. She has been sober from alcohol for three years now and have continued to prosper in her life.

g. She would like to formally apologize for her previous behavior that prevented her from moving forward with her service obligations including her AWOL separations and service inadequacies. She wishes the sexuality discrimination and trauma as she was not aware she was experiencing did not play a part in her abrupt decisions to out-process, but the climate during that time was uncomfortable and difficult to ignore or navigate around.

h. Some of the things that have affected her with an other than honorable discharge is the inability to receive adequate healthcare, not being recognize with some agencies regarding services, and falling under conditions of not being qualified for employment opportunities that she otherwise would have qualified for if she had an honorable discharge. She has missed numerous federal job opportunities because of her discharge, which would have placed her in better positions even until this day.

i. She would like to be considered for an upgrade because there are many things she can accomplish going forward with this prestigious honor. She would like to be recognized as a veteran even for the short period she gave of her life with the intention to honorably serve her country, but life unfortunately got in the way of her being able to

fulfill her service obligations. She regrets the decisions that she made during that time that forced her to take the step of out processing. Her intentions were to be a lifelong soldier, but going forward she would like the time she spent to mean something regarding her discharge classification.

3. The applicant enlisted in the Regular Army on 8 April 1998.

4. Her duty status was changed on several occasions:

- On 24 March 2000, from present for duty (PDY) to AWOL
- On 20 April 2000, from AWOL to PDY
- On 20 May 2000, from AWOL to dropped from the rolls (DFR)
- On 21 July 2000, from DFR to Returned to military control

5. On 27 July 2000, court martial charges were preferred against the applicant for two specifications of being AWOL:

- AWOL from 24 March 2000 to 20 April 2000
- AWOL from 20 May 2000 to 21 July 2000

6. On 28 July 2000, she voluntarily requested discharge in lieu of trial by court martial for the good of the service under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. She understood that she may request discharge in lieu of trial by courts-martial because of the charges of AWOL which have been preferred against her under the Uniform Code of Military Justice (UCMJ), each of which authorizes the imposition of a bad conduct or dishonorable discharge.

a. Having been afforded the opportunity to consult with appointed counsel for consultation. She consulted with counsel, and she was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to her.

b. She acknowledged her understanding that by requesting discharge, she was admitting guilt to the charges against her, or of a lesser included offense that also authorized the imposition of an undesirable discharge.

- She understood that if her discharge request was approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Veterans Administration, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws

- She may expect to encounter substantial prejudice in civilian life because of an Under Other than Honorable Discharge
- She was advised she could submit any statements she desired in her own behalf; she elected not to submit a statement

7. On 20 November 2000, her immediate commander recommended Trial by Special Court-Martial.

8. On an illegible date, her immediate commander recommended approval and issuance of a discharge under other than honorable conditions.

9. On 18 January 2001, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, chapter 10, in lieu of court martial and directed that she be reduced to the lowest enlisted grade furnished an under other than honorable condition discharge.

10. Accordingly, on 14 February 2001, the applicant was discharged under the provisions of AR 635-200, chapter 10, in lieu of trial by court martial. Her DD Form 214 shows she completed 2 years, 7 months, and 8 days net active service this period. It also shows:

- Item 24 (Character of Service): under other than honorable conditions
- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 4
- Item 29 (Date of Time Lost During this Period): Under 10 USC 972: 20000324-20000419 (24 March 2000 – 19 April 2000; 20000520-20000720 (20 May 2000 – 19 April 2000)

11. On 27 January 2009, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied her request for an upgrade of his discharge.

12. In her previous request (AR20180007216) on 8 January 2020, after reviewing the application and all supporting documents, the Board determined relief was not warranted.

13. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of

guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

14. By regulation 635-5-1, (Personnel Separations – Separation Program Designators (SPD), paragraph 10, in lieu of trial by court martial are assigned the Separation Code KFS.
15. By regulation 601-210, (Regular Army and Reserve Enlistment Program) paragraph 3-8, the RE Code associated with this separation is RE-4 which applies to persons separated from last period of service with a non-waivable disqualification, ineligible for enlistment.
16. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration of her previous request for changes to her characterization of service and narrative reason of discharge. She contends her request is related to her experience of mental health conditions including PTSD and policies related to "DADT." 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 on 8 April 1998; 2) On 27 July 2000, court martial charges were preferred against the applicant for two specifications of being AWOL from 24 March-20 April 2000 and 20 May-21 July 2000; 3) On 14 February 2001, the applicant was discharged, Chapter 10, in lieu of trial by court martial. Her characterization of service was under other than honorable conditions; 4) The ADRB reviewed and denied the applicant's request for an upgrade of her characterization of service on 27 January 2009; 5) The ABCMR reviewed and denied the applicant's request for an upgrade of her characterization on 8 January 2020.

b. The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian medical documentation provided by the applicant were also reviewed.

c. The applicant asserts she was experiencing mental health conditions including PTSD and negative experiences related to DADT policies, which mitigates her misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. The applicant was not discharged for her sexual orientation.

d. A review of JLV provided evidence the applicant has engaged with the VA from 2013-2019 for assistance with homelessness. There is insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and she does not receive service-connected disability. The applicant provided civilian medical documentation from COMHAR, which was behavioral health intake from 2017. The applicant reported a history of alcohol abuse starting before her enlistment and history of significant childhood trauma. She reported having negative experiences related to DADT during her enlistment. In 2017, she was diagnosed with Bipolar Disorder, PTSD, and Major Depression Disorder.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates her misconduct which led to her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced mental health conditions including PTSD and negative experiences related to DADT that mitigates her misconduct while on active service. There is evidence the applicant has been diagnosed in 2017 with Bipolar Disorder, PTSD, and Major Depression Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions including PTSD and negative experiences related to DADT that mitigates her misconduct while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant has been diagnosed with mental health conditions including PTSD in 2017. During a civilian behavioral health intake in 2017, the applicant reported a history of alcohol abuse and childhood trauma prior to her enlistment. She was diagnosed with significant mental health conditions and PTSD. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD during her active service. She did report negative experiences associated with her sexual orientation and DADT policies. However, the applicant was not discharged for her sexual orientation, and there is insufficient evidence beyond self-report that she experienced discrimination associated with DADT. However, the applicant may have been experiencing symptoms of PTSD related to her traumatic experiences prior to her enlistment or another mental health conditions. These conditions could have resulted in her reported alcohol abuse and her avoidant behavior of going AWOL. This type of avoidant behavior and self-medicating behavior of alcohol abuse can be a natural sequela to PTSD and her other mental health conditions later diagnosed in 2017. However, these conditions were present before the applicant's

enlistment, and there is insufficient evidence she was exposed to a potentially traumatic event during her enlistment or reported or was diagnosed with a service-connected mental health condition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published Department of Defense guidance for consideration of discharge upgrade requests, the Board majority found that partial relief was warranted.
2. The Board carefully considered the applicant's contentions, her record of service, the frequency and nature of her misconduct, her request for discharge and the character of service she received upon separation. The Board considered her statement regarding PTSD and harassment due to her sexual orientation. The Board considered the review and conclusions of the Medical Advisor to include the applicant's VA diagnosed conditions and the evidence that shows the conditions were present before the applicant's enlistment, and insufficient evidence to show she was exposed to a potentially traumatic event during her enlistment or reported or was diagnosed with a service-connected mental health condition. The Board found: (1) the applicant asserts she experienced mental health conditions including PTSD and negative experiences related to DADT that mitigates her misconduct while on active service. There is evidence the applicant has been diagnosed in 2017 with Bipolar Disorder, PTSD, and Major Depression Disorder; (2) the applicant asserts she experienced mental health conditions including PTSD and negative experiences related to DADT that mitigates her misconduct while on active service; (3) there is sufficient evidence the applicant has been diagnosed with mental health conditions including PTSD in 2017 and these conditions could have resulted in her reported alcohol abuse and her avoidant behavior of going AWOL.
3. The Board did not find that the applicant was separated due to her sexual orientation. The Board did not find sufficient evidence that the reason and authority for her separation, her separation code, or her reentry code were in error or unjust. Based on a preponderance of evidence, the majority of Board members determined that her conditions sufficiently mitigated her misconduct to warrant a partial upgrade to her character of service as a matter of liberal consideration. The minority member determined her conditions and experiences were sufficient to warrant full relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: [REDACTED] : GRANT FULL RELIEF
[REDACTED] : [REDACTED] : GRANT PARTIAL RELIEF
: : : GRANT FORMAL HEARING
: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board majority determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 14 February 2001, to show item 24 (Character of Service): Under Honorable Conditions, General
2. The Board further determined that 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 upgrading her characterization of service to Honorable.

6/11/2025

X

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. Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

2. AR 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and non-waivable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waivable disqualification. This includes anyone with a DA imposed bar to reenlistment

in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "KFS" will be assigned an RE Code of "4."

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 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. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

- a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.
- b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.
- c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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. 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.

8. 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//