

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240007029

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

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

- DD Form 293 (Application for the Review of Discharged from the Armed Forces of the United States)
- Five (5) character statements
- Veterans Affairs (VA) medical documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect:

a. She is a victim of an unreported Military Sexual Trauma (MST), which is now recognized as service-connected by the VA at 50 percent. While she did use drugs one time during her service, this incident led to her discharge. She was self-medicating due to the PTSD stemming from the MST. At the time of the incident, she had just extended her service to go on deployment and aspired of making a career in the Army, fully aware that her drug use hindered those plans.

b. Since that solitary incident, she has not encountered any issues with law enforcement and has abstained from drug use. She is seeking an upgrade of her discharge status based on her honorable service up until that point, as well as her positive conduct since then. While she recognizes the mistake of using drugs as a coping mechanism, she has not repeated that behavior since the incident, and she wishes to no longer be defined by that experience.

3. The applicant provides:

a. Five (5) character statements, authored by friends and family, all of which attest to her deserving of an upgrade based on her loyalty, dependability, compassion, and her professionalism.

b. VA medical documents (508 pages).

4. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 10 May 2011.

b. The complete facts and circumstances surrounding the applicant's separation are not available for review. However, her DD Form 214 reflects was discharged on 7 April 2014, under the provisions of AR 635-200, paragraph 14-12c(2), misconduct (drug abuse), character of service of general under honorable conditions, separation code JKK, and reenry code 4. She had 2 years, 10 months, and 28 days of net service this period. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows she was awarded National Defense Service Medal // Global War on Terrorism Service Medal and Army Service Ribbon

5. Criminal Investigation Command memorandum, dated 17 October 2024, Subject: Request for Redacted CID and Military Police Reports Pertaining to the applicant, states, "a search of the Army criminal file indexes, utilizing the information you provided revealed no Military Sexual Trauma (MST) records pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals."

6. The applicant applied to the ADRB for an upgrade of her discharge on 8 January 2016. The ADRB determined the discharge was both proper and equitable and voted to deny relief.

7. AR 15-185 (Army Board for Correction of Military Records) states, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) discharge. The applicant contends her request is related to PTSD as a result of military sexual trauma (MST). 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 10 May 2011; 2) The complete facts and circumstances surrounding the applicant's separation are not available for review; 3) On 7 April 2014, the applicant was discharged under Chapter 14-12c (2) misconduct (drug abuse) with a general under honorable conditions characterization of service. She completed 2 years, 10 months, and 28 days of active service.

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

c. The applicant asserts she experienced MST and resultant PTSD while on active service, which mitigates her misconduct. The applicant engaged in three separate mental health visits beginning 07 September 2012 regarding difficulties in an intimate relationship. During a 08 January 2014 evaluation, the applicant was command-referred to ASAP following a positive urinalysis for THC. During this encounter, she reported that her drug use was stress-related following an arrest for theft. She was subsequently evaluated and not diagnosed or recommended for mandated treatment. On 21 January 2014, the applicant underwent a mental status evaluation completed by a clinical psychologist as part of her administrative separation process. During this evaluation, she was diagnosed with a phase of life circumstance, with rule-outs of alcohol-related disorder and adjustment disorder. The applicant was screened for PTSD and mild traumatic brain injury, which were negative at that time. The evaluating provider recommended that the applicant attend follow-up appointments with mental health following this evaluation. During this encounter, the applicant also voluntarily requested ASAP enrollment for treatment of increased drinking prior to and related to her misconduct and continued in group and individual therapy for substance abuse until her discharge.

d. A review of JLV provided evidence the applicant was engaged with the VA beginning on 03 February 2016 until the present, primarily for medical and mental health concerns. During her initial encounter with the VA, she disclosed experiencing MST in November 2013, which was prior to her discharge and reportedly prior to her misconduct. She was also diagnosed and treated for PTSD by the VA starting on 16

August 2016. Her VA Compensation and Pension Evaluation (C&P) examination (most recent, 27 June 2024) resulted in the diagnosis of service-connected unspecified depressive disorder, which was partially as a result of her aforementioned MST.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant has been diagnosed with a service-connected mental health conditions as a result of MST. The applicant's contention and subsequent evidence of a service-connected mental health conditions as a result of her MST provides support for mitigation.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced MST, which mitigates her misconduct. There is evidence that the applicant has been diagnosed with a mental health condition including PTSD as a result of her experience of MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST and resultant mental health conditions to include PTSD while on active service, which mitigates her misconduct. The applicant has been diagnosed by the VA with service-connected mental health conditions related to her experience of MST to include PTSD.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes. There is sufficient evidence the applicant has been diagnosed with service-connected mental health conditions including PTSD related to her experience of MST by the VA. There is a natural sequelae between avoidant and self-medicating behavior such as drug use and MST and resultant mental health conditions including PTSD. At this time, there is limited evidence to the complete circumstances surrounding the applicant's discharge. However, there is sufficient evidence that she was discharged for drug use. Therefore, per Liberal Consideration, the applicant's misconduct that we are aware of with the available documentation is mitigable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential

outcome was to grant relief based on the advising official finding sufficient evidence the applicant has been diagnosed with service-connected mental health conditions including PTSD related to her experience of MST by the VA. However, upon further review of the applicant's petition, available military records and medical review, the Board majority found insufficient evidence to grant relief, notwithstanding the advising opinion of the Agency Medical Advisor that there is sufficient evidence the applicant has been diagnosed with a service-connected mental health conditions as a result of MST. The applicant's contention and subsequent evidence of a service-connected mental health conditions as a result of her MST provides support for mitigation.

2. Kurta Questions:

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3. The Board noted the applicant's claim that her drug use was a singular event, stemming from self-medication due to PTSD related to MST, and that she has maintained a commendable post-service record as reflected in her character letters of support. While the Board is sympathetic to the applicant's circumstances and recognizes the medical advisor's opinion that her mental health condition provides some mitigation, the Board found that the discharge under paragraph 14-12c(2), for misconduct (drug abuse), remains appropriate. Furthermore, the characterization of service reflects the seriousness of the misconduct at the time, and the Board agreed

that the applicant's overall service, while honorable in parts, does not warrant an upgrade to fully Honorable. Therefore, relief is denied.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 of the regulation deals with separation for various types of misconduct, which includes drug abuse and provides that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. First time drug offenders in the grade of sergeant and above, and all Soldiers with three years or more of total military service, active and reserve, will be processed for separation upon discovery of a drug offense. All Soldiers must be processed for separation after a second offense.

b. Paragraph 3-7a (Honorable Discharge) 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.

c. Paragraph 3-7b (General Discharge) a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

6. 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. 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. 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.

7. 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//