

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240007065

APPLICANT REQUESTS:

- an upgrade of her under honorable conditions (General) discharge to honorable
- reinstatement of her rank to specialist (SPC), E-4

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Telemedica Medical Questionnaire (19 pages)
- Certificates and Awards (5 pages)
- Judgment for Dissolution of Marriage (12 pages)

FACTS:

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

2. The applicant states she is seeking an upgrade of her under honorable conditions (General) discharge to honorable and reinstatement of her rank to E-4 (SPC). She was physically assaulted by a sergeant (SGT), contacted the military police (MP) and had to go to the hospital for her injuries. She was later arrested by the MPs despite the obvious injuries to her neck and charged with assault. She received an Article 15 for the incident which led to her "spiraling," because her unit did not believe her. She began to drink heavily and in October 2002, she received a citation for driving under the influence (DUI). She subsequently received a second Article 15, and the SGT would remind her that he could make it all go away if he slept with her. She began hiding in different rooms to remain out of his reach and her behavior led to her discharge for misconduct. She was considered insubordinate, but in reality, she was terrified of him. She left the military with no money and no support.

3. The applicant provides:

a. A Telemedica medical questionnaire (19 pages) outlines the history of the applicant's personal and professional life for the purpose of being screened for post-traumatic stress disorder (PTSD) or other mental health conditions.

b. Her certificates and awards (5 pages) include 2 associate degrees, a letter of commendation for initiating lifesaving measures, and 2 certificates of training from the Alameda County Sheriff's Office.

c. A Judgment for Dissolution of Marriage (12 pages) shows the applicant was granted a divorce effective 17 October 2022,

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

a. She enlisted in the Regular Army on 22 September 1999.

b. She accepted nonjudicial punishment for the following:

- 15 April 2002 – assault of SGT G by scratching him in on the face and neck
- 7 November 2002 – physically control a vehicle while under the influence; her punishment included reduction to private (PVT), E-1
- 25 November 2001 [sic] – supplementary action for failure to go to her appointed place of duty (extra duty) resulted in forfeiture of pay

c. The service record includes the applicant's medical evaluations, for the purpose of separation which indicated she was generally in good health with the exception of self-reporting depression. She was marked qualified for service and separation.

- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination), 27 November 2002

d. On 20 November 2002, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows there was no evidence of mental disorder of sufficient severity to warrant disposition through military medical channels. She was psychiatrically cleared for administrative separation or judicial action deemed appropriate by the command.

e. The applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 14, paragraph 14-12c, for commission of a serious offense. The specific reasons for his proposed recommendation were her assault of a noncommissioned officer (NCO), controlling a vehicle while under the

influence, failure to pay debts, failure to obey a lawful order, failure to pay her insurance, disrespect to an NCO, and operating a vehicle without proper registration. She acknowledged receipt on 12 December 2002.

f. On 16 December 2002, after consulting with legal counsel, she acknowledged:

- the rights available to her and the effect of waiving said rights
- she may apply to the ADRB or the ABCMR for upgrading
- she will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge
- she elected to submit matters on her own behalf

g. A statement from the applicant dated 18 December 2002 indicated she was requesting retraining because she believed she was a good Soldier and an asset to the Army. She further noted there were discrepancies in the military police report regarding the 5 March 2002 incident with SGT G. The medical records prove she was fighting in self-defense and did not intend to assault him. She also requested medical attention despite what the MP report states. She has not had a drink since the day of her DUI and took full responsibility for her actions. She and her family suffered a great deal. She was responsible for her 4 year old and her 10 year old nephew who lacked parental support. She did not receive child support for either and hoped to make a career of the Army to provide for her family what others could not, nor had experienced.

h. The immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that her period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

i. On 7 January 2003, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. She would be issued a General Discharge Certificate.

j. On 24 January 2003, she was discharged from active duty with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 3 years, 4 months, and 3 days of active service with no lost time. It also shows she was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

5. On 6 February 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding military sexual trauma and no records were found.

6. On 2 August 2012, 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 her discharge.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her character of service from under honorable conditions (general) to honorable as well as reinstatement of her rank to specialist (SPC), E-4. She contends PTSD and MST as related to her request. This opine will narrowly focus on her request for an upgrade of her character of service and will defer all other requests to the Board.

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:

- Applicant enlisted into the Regular Army on 22 September 1999.
- Applicant accepted nonjudicial punishment for the following:
- 15 April 2002 – assault of SGT G by scratching him on the face and neck
- 7 November 2002 – physically controlling a vehicle while under the influence; her punishment included reduction to private (PVT), E-1

- 25 November 2001 – supplementary action for failure to go to her appointed place of duty (extra duty) resulting in forfeiture of pay
- Applicant's immediate commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 14, paragraph 14-12c, for commission of a serious offense. The specific reasons for his proposed recommendation were her assault of a noncommissioned officer (NCO), controlling a vehicle while under the influence, failure to pay debts, failure to obey a lawful order, failure to pay her insurance, disrespect to an NCO, and operating a vehicle without proper registration. She acknowledged receipt on 12 December 2002.
- Applicant was discharged on 24 January 2003, under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense. Her DD Form 214 shows she received an under honorable conditions (general) character of service, with separation code JKQ, and reentry code of 3. She was credited with 3 years, 4 months, and 3 days of active service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, she was physically assaulted by a sergeant (SGT G), who she was briefly in an intimate relationship with, she contacted the military police (MP) and had to go to the hospital for her injuries. She was later arrested by the MPs despite the obvious injuries to her neck and charged with assault. She received an Article 15 for the incident which led to her "spiraling," because her unit did not believe her. She began to drink heavily and in October 2002, she received a citation for driving under the influence (DUI). She subsequently received a second Article 15, and her SGT at the time would sexually harass her and state that he could make it all go away if she slept with him. She began hiding in different rooms to remain out of his reach and her behavior led to her discharge for misconduct. She was considered insubordinate, but in reality, she was terrified of him. She left the military with no money and no support.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a medical history form for the purpose of separation, dated 19 November 2002, where she endorsed trouble sleeping as well as depression. On 20 November 2002, the applicant underwent a mental status evaluation. The evaluation states there was no evidence of mental disorder of sufficient severity to warrant disposition through military medical channels. She was psychiatrically cleared for any administrative action deemed appropriate by command. A statement from the applicant, dated 18 December 2002, in defense of the proposed action to separate her from military service states there were discrepancies in the military police report regarding the 5 March 2002 incident with SGT G. The medical records prove she was fighting in self-defense and did not intend to assault him. She also requested medical attention despite what the MP report states. In addition, she had not consumed alcohol since her DUI and took full responsibility for her

actions. Of note, on 6 February 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant and reported no records were found. This is inconsistent with the applicant's discharge processing, where it states MP's responded to her assault of an NCO, and a report should have been available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 30% service connected for MST-related PTSD. The applicant is currently being treated for her symptoms of MST-related PTSD. During a comprehensive assessment in December 2024, she reported while in military service she dated a sergeant and when she ended the relationship, he physically assaulted her, "slammed me against a wall and was choking me. He called the police before I could, so I was charged with domestic violence." She asked to press charges against him, since she was physically injured, "but they said no" and she received an Article 15. This led to her excessive consumption of alcohol and her receiving a DUI. Her first sergeant called her into his office, groped her and offered "to make it go away" if she would sleep with him. She further reported, "every time he saw me, he would call me in his office, or if he saw me in the halls, he would touch my butt or something". He further told her that he could "promote her if she had sex with him, or he would kick her out". She got in trouble once again, for not performing extra duties, since she tried to avoid him and was chaptered out.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant experienced sexual harassment and intimate partner violence, and developed a subsequent mental health condition that mitigates her discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing sexual harassment and intimate partner violence (IPV).

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts experiencing MST and IPV while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to assault of a noncommissioned officer (NCO), controlling a vehicle while under the influence, failure to pay debts, failure to obey a lawful order, failure to pay her insurance, disrespect towards an NCO, and operating a vehicle without proper registration. The applicant asserts the mitigating experiences of

IPV and MST and is service connected for PTSD. The applicant asserts the alleged assault of a noncommissioned officer (NCO) occurred in self-defense when she was being attacked by a former intimate partner, this mitigates her actions. In addition, she is service connected for PTSD due to the sexual harassment she experienced while in service, which mitigates her disrespect towards an NCO and failure to obey a lawful order, since the applicant contends, he was the abuser who was sexually harassing her, and she was engaging in behavior to avoid further harassment. Given the association between MST and the use of substances to cope with trauma, the applicant's controlling a vehicle while under the influence is also mitigated. In addition, the applicant's misconduct of failure to pay debts, failure to pay her insurance, and operating a vehicle without proper registration is mitigated by the association between her experience of MST and avoidant behavior.

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 findings outlined in the medical review and the post-service achievements evidence provided by the applicant, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to Honorable.

However, based upon the applicant receiving a legally executed Article 15 for driving under the influence which led to her reduction to Private/E1, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's rank.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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: Honorable
- 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 restoring the applicant’s rank to Specialist/E4.

//SIGNED//
 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. 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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered

thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.

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

b. Paragraph 3-7b (General Discharge) 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. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c states Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

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 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.

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, 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.

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.

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.

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//