

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240007500

APPLICANT REQUESTS: an upgrade of her under other than honorable (UOTHC) character of service and an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 was sexually harassed, demeaned, degraded, and terrorized while serving. The treatment she received created a myriad of mental health problems. Her delay in requesting an upgrade was due to fear of retaliation. The applicant notes post-traumatic stress disorder (PTSD), other mental health, and sexual assault/harassment as conditions related to her request. The letters referenced on the applicant's DD Form 149 are not included with her application.
3. The applicant enlisted in the Regular Army on 3 October 2000.
4. The applicant was reported absent without leave (AWOL) on 17 May 2001 and was subsequently dropped from the rolls on 16 June 2001. She was apprehended by civil authorities, and returned to military control on 27 June 2001.
5. Court-martial charges were preferred against the applicant on 10 July 2001 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL, from on or about 17 May 2001 until on or about 27 June 2001.
6. The applicant consulted legal counsel on 10 July 2001.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an UOTHC discharge, and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In her request for discharge, she acknowledged understanding that by requesting a discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion. She further acknowledged understanding that if her discharge request were 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.

c. She was advised she could submit any statements she desired in her own behalf. She elected not to submit a statement.

7. The applicant's commander recommended approval of the requested discharge on 16 January 2002 and further recommended the applicant be separated with a UOTHC discharge.

8. On 25 January 2002, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

9. The applicant was discharged on 5 February 2002, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows her character of service was UOTHC. She completed 1 year, 2 months, and 22 days of net active service.

10. On 22 January 2025, the Army Review Boards Agency (ARBA) requested a copy of the medical documents which support the applicant's contention of PTSD and other mental health issues. To date, no additional documentation has been received.

11. In the processing of this case, ARBA requested a copy of Redacted CID reports for sexual assault/harassment and Military Police Reports from the US Army Criminal Investigation Division (CID). To date, no response has been received.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her other than honorable conditions discharge. The applicant contends her request is related to PTSD, other mental health issues, and sexual harassment during her military service. 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 03 October 2000; 2) The applicant went AWOL from 17 May 2001 to 27 June 2001 resulting in court-martial charges on 10 July 2001; 3) On 05 February 2002, the applicant was discharged under Chapter 10 in lieu of trial by court-martial with an other than honorable conditions characterization of service. She completed 1 year, 2 months, and 22 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. No additional documentation was available for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts she experienced sexual harassment while on active service, which mitigates her misconduct. However, there is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided evidence the applicant was engaged with the VA beginning on 20 August 2001. There is insufficient evidence at this time that the applicant has been diagnosed with a service-connected mental health condition, and she does not receive any service-connected disability for a mental health condition at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates her misconduct.

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 sexual harassment/MST and mental health conditions including PTSD while on active service, which mitigates her misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts that she experienced sexual harassment/MST and mental health conditions including PTSD during her active service that mitigates her misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes, the applicant's contention of experienced sexual harassment/MST and resulting mental health conditions while on active service is sufficient evidence for mitigation. The applicant engaged in avoidant behavior such as going AWOL that resulted in her discharge from active service. This behavior is a natural sequelae to MST as well as some mental health conditions, including PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

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 her characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates her misconduct. The Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of going absent without leave (AWOL) for over a month and being apprehended by civil authorities rather than voluntarily returning to military control.

2. The Board noted the applicant's contentions that she was subjected to sexual harassment, degradation, and intimidation during her military service, which contributed to the development of post-traumatic stress disorder (PTSD) and other mental health conditions. She further states that fear of retaliation delayed her request for an upgrade. While the Board acknowledges the seriousness of these claims, the application did not include the referenced supporting letters, medical documentation. In the absence of corroborating evidence to support the applicant's claims of harassment and mental health conditions during service and given the nature of the misconduct and the circumstances surrounding her separation, the Board found the applicant's discharge was both proper and equitable. Therefore, the Board denied relief.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced sexual harassment/MST and mental health conditions including PTSD while on active service, which mitigates her misconduct.

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4. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	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 (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. 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 regulation provides 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.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//