

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240008023

Applicant did not specify action requested in item 10 of the application; therefore, the Board will consider an upgrade of her under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 did not offer a rationale for why the Board should consider granting an upgrade. Furthermore, she failed to provide supporting documentation to substantiate her claims of posttraumatic stress disorder (PTSD) or any other mental health issues relevant to her request.
3. A review of the applicant's service record shows:
 - She enlisted in the Regular Army on 8 February 2007
 - She received non-judicial punishment on 14 September 2007 for on or about 5 July 2007 and on about 5 August 2007, wrongfully use D-Methamphetamine and MDMA (ecstasy); she was reduced to private/E-1
 - On 5 October 2007, she was advised by consulting counsel of the basis for the contemplated action to separate her for commission of a serious offense UP of Chapter 14-12c, AR 635-200 and its effects; of the rights available to her and the effects of any action by her waiving her rights
 - On 4 November 2007, her commander notified her of his intent to separate her under the provisions of AR 635-200 (Active Duty Enlisted Administrative

Separation), chapter 14-12c, commission of a serious offense, with a character of service of under other than honorable conditions

- Her commander/chain of command recommend approval and that her character of service be under other than honorable conditions
- On 9 November 2007, the separation authority approved separation UP of AR 635-200, chapter 14-12c, commission of a serious offense; he directed her discharge and furnished an under other than honorable conditions discharge
- Accordingly, she was discharged under other than honorable conditions on 15 November 2007, she completed 8 months and 15 days net active service this period, with lost time from 15 October 2007 thru 7 November 2007

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions discharge. She contends she was experiencing mental health conditions including PTSD that mitigates her misconduct. 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 February 2007; 2) The applicant received non-judicial punishment on 14 September 2007 for wrongfully use D-Methamphetamine and MDMA (ecstasy); 3) On 15 November 2007, the applicant was discharged, Chapter 14-12c, commission of a serious offense. Her service was characterized as under other than honorable conditions. She completed 8 months and 15 days net active service this period, with lost time from 15 October 2007 thru 7 November 2007.

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 medical documentation was provided for review.

c. The applicant asserts she was experiencing mental health conditions including PTSD, which mitigates her misconduct. There was insufficient evidence the applicant

reported or was diagnosed with a mental health condition, including PTSD during her active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition including PTSD by the VA, and she does not receive any service-connected disability for a mental health condition including PTSD.

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 mental health 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 mental health conditions including PTSD which mitigates her misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while she was on active service. The applicant did use illegal drugs, which could be avoidant behavior and a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends she was experiencing a mental health condition or an experience that mitigates her misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

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.

2. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Further, the Board concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
			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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

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. 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. 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. 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.

3. 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.

4. 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.

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.

//NOTHING FOLLOWS//