

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240008034

APPLICANT REQUESTS:

- an upgrade of her entry level status to honorable
- a video/telephonic appearance before the Board

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)
- Veterans Affairs Rating Decision, 17 June 2024

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 requesting an upgrade of her discharge because she was threatened with sexual assault by her drill sergeant and his friend, another drill sergeant. During a detail she was knocked unconscious by a falling large limb from a tree and was not taken nor sent to the emergency room. She now suffers with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), severe migraines, anxiety and depression. Her drill sergeant, first sergeant and the physician at the Army Hospital informed her that she would receive an honorable/medical discharge. They attempted to coerce her into having a hysterectomy because she could go further in the military. Her and other females in the basic training unit were harassed. She stopped eating and was afraid to sleep fearing that she would be raped. She was not given any information on who to contact. Her drill sergeant told them he was their mother, father, sister, brother in a loud and threatening manner, and terminated their phone calls.

3. A review of the applicant's record shows:

a. The applicant enlisted in the Regular Army on 2 April 1988.

b. The complete facts and circumstances surrounding the applicant's discharge processing are not available for review. Her DD Form 214 shows she was discharged on 29 April 1988, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, as she did not meet procurement medical fitness. She completed 26 days of active service. She was not awarded a military occupational specialty (MOS).

4. On 14 March 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.

5. 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.

6. By regulation (AR 15-185), 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.

7. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her uncharacterized discharge to honorable. She contends a traumatic brain injury (TBI), sexual harassment, and PTSD are related to her request. 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 2 April 1988; 2) The complete facts and circumstances surrounding the applicant's discharge processing are not available for review. Her DD Form 214 shows she was discharged on 29 April 1988, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, as she did not meet procurement medical fitness. She completed 26 days of active service. She was not awarded a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy

Viewer (JLV) and VA medical documentation provided by the applicant were also examined.

c. The applicant asserts that her request is related to her reported experience of sexual harassment, TBI, and PTSD. There is insufficient evidence the applicant reported or was treated for a TBI or a mental health condition including PTSD while she was on active service.

d. A review of JLV provided evidence the applicant was a dependent of a service member and received medical treatment for various physical concerns for many years following her discharge. There is insufficient evidence the applicant reported mental health symptoms related to her military training or being exposed to a head injury, but she did receive treatment for migraines starting in 2014. She also received intermittent treatment predominantly in a primary care setting for situational depression starting in 2012. Starting in 2018, the applicant began to engage with the VA for behavioral health treatment. She reported significant ongoing anxiety and stress related to her experience in basic training. The applicant's description of the amount of time she spent in basic training was inconsistent with her military record. The applicant also reported being exposed to sexual harassment during basic training. She has been diagnosed with service-connected Major Depression in 2018 and migraines in 2023.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant was diagnosed with a service-connected mental health condition by the VA. Yet, there is insufficient evidence the applicant was experiencing PTSD or a TBI at the time of her active service. The applicant's report of sexual harassment is sufficient for the Board's consideration. However, there is insufficient evidence surrounding the facts and circumstances concerning the applicant's discharge to provide an appropriate opinion on possible mitigation of her discharge as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed with service-connected mental health condition by the VA. Yet, there is insufficient evidence the applicant was experiencing PTSD or a TBI at the time of her active service. The applicant's report of sexual harassment is sufficient for the Board's consideration. However, there is insufficient evidence surrounding the facts and circumstances concerning the applicant's discharge to provide an appropriate opinion on possible mitigation of her discharge as the result of his mental health condition or experience.

(2) Did the condition exist or experience occur during military service? N/A.

- (3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was separated under the provisions of chapter 5 of Army Regulation 635-200, due to failing procurement medical fitness standards. She was credited with 26 days of service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board reviewed and agreed with the medical advisor's review finding that there is insufficient evidence surrounding the facts and circumstances concerning the applicant's discharge to provide an appropriate opinion on possible mitigation of her discharge as the result of mental health condition or experience.

2. The Board determined 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:

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.

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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 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

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. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing were initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were in an entry-level status.

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, U.S. 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//