

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240008523

APPLICANT REQUESTS:

- upgrade of her general, under honorable conditions discharge
- a telephonic video or hearing with the Board

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

DD Form 149 (Application for Correction of Military Record), 4 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 indicates on her DD Form 149, that sexual assault or harassment is an issue or condition related to her request. She states she was coerced into having a relationship with a married captain in the Army.
3. The available record contains sufficient evidence to support an administrative correction to the characterization of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for an earlier period of service and will be listed in the administrative notes section.
4. A review of the applicant's service record shows:
 - a. On 6 June 1984, she enlisted in the U.S. Army Reserve (USAR) for 8 years.
 - b. On 28 May 1985, she entered active duty (AD) for training.
 - c. On 10 August 1985 she was released from active duty. Her DD Form 214 shows a characterization of Entry Level Status and a narrative reason for separation of expiration term of service.

d. On 5 August 1986, she enlisted in the Regular Army in the rank of private first class (PFC).

e. She was counseled on diverse occasions for:

- failure to repair on 12 December 1986
- failing to attend the Modern Army Record Keeping System training class on 22 May 1987
- performance of duty and not securing classified material on 1 June 1987
- failing to be at her appointed place of duty and not improving military bearing on 11 June 1987

f. On 23 June 1987, she accepted nonjudicial punishment (NJP) for failing to go to her appointed place of duty on 11 June 1987 and 17 June 1987; disobedience of a lawful order on 16 June 1987; and disrespectful language towards a noncommissioned officer on 11 June 1987. Her punishment consisted of reduction from specialist 4 to PFC (a reduction to private 2 was suspended for 90 days), forfeiture of \$369.00 per month for 2 months, and extra duty and restriction for 45 days.

g. Supplementary NJP resulting in her reduction to private 2/E-2 is not available in her service record.

h. On 24 June 1987, she was counseled for taking an overdose of Motrin resulting in emergency room treatment.

i. On 1 July 1987, she underwent a psychiatric evaluation as directed by her command. The examining psychologist diagnosed occupation problems and mixed personality disorder with passive aggressive and histrionic features. He further noted she met the retention standards. He recommended the applicant be considered for Chapter 5-13 separation under provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

j. On 1 July 1987, she was counseled for not cutting grass in accordance with the extra duty task given to her by her first sergeant. She responded in writing that she was having difficulties adjusting to military service and was having physical and mental difficulties.

k. On 2 July 1987, she underwent a medical examination and gave a report of medical history. Her medical report indicated depression and tearfulness. Her medical history indicated fair health with a recent suicide attempt and treatment. The examining physician noted she was qualified for separation.

l. On 17 July 1987, her company commander notified her of his intent to recommend her discharge from the service under the provisions of Army Regulation 635-200, Chapter 13 for unsatisfactory performance and advised her of her rights. The reasons for his proposed action were her inability to follow established rules and regulations and the orders of those in positions of authority to her. He further advised her she could receive a general, under honorable conditions or honorable characterization of service.

m. On 17 July 1987, she acknowledged and elected her rights. She understood she had a right to consult with consulting counsel, to submit statements in her own behalf; to obtain copies of the documents that would be sent to the discharge authority; and to waive these rights in writing. She further understood that she may expect to encounter substantial prejudice in civilian life if a general discharge were issued to her and she would be ineligible to apply for enlistment for a period of 2 years after discharge. She elected not to submit statements in her own behalf.

n. On 22 July 1987, her company commander recommended her discharge from the service.

o. On 22 July 1987, the separation authority approved the recommended discharge and directed issuance of a General Discharge Certificate.

p. On 3 August 1987, she was discharged. Her DD Form 214 shows she was discharged under the provisions of Army Regulation 635-200, Chapter 13 with a under honorable conditions (general) discharge, by reason of unsatisfactory performance. She completed 11 months and 29 days of net active service this period.

4. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade 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 general, under honorable conditions discharge. On her DD Form 149, the applicant indicated Sexual Assault/Harassment are related to her request. More specifically, she indicated she was coerced into having a sexual relationship with a married Captain. 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 U.S. Army Reserves (USAR) on 06 June 1984, 2) she enlisted in the Regular

Army on 05 August 1986, 3) she was counseled on several occasions for failure to repair (12 December 1986), failing to attend the Modern Army Record Keeping System training class on 22 May 1987, performance of duty and not securing classified material on 01 June 1987, and failing to be at her appointed place of duty and not improving military bearing on 11 June 1987, 4) on 23 June 1987, she accepted NJP for failing to go to her appointed place of duty on 11 June 1987 and 17 June 1987; disobedience of a lawful order on 16 June 1987; and disrespectful language towards a noncommissioned officer (NCO) on 11 June 1987, 5) on 24 June 1987, she was counseled for taking an overdose of Motrin resulting in emergency room treatment, 6) on 01 July 1987, she underwent a psychiatric evaluation as directed by her command and was diagnosed Occupational Problems and Mixed Personality Disorder with Passive Aggressive and Histrionic Features. The evaluating provider recommended the applicant be considered for Chapter 5-13 separation under provisions of AR 635-200, 7) on 1 July 1987, she was counseled for not cutting grass in accordance with the extra duty task given to her by her first sergeant. She responded in writing that she was having difficulties adjusting to military service and was having physical and mental difficulties, 8) on 02 July 1987, she was medically cleared for separation, 9) on 17 July 1987, her company commander notified her of his intent to recommend her discharge from the service under the provisions of AR 635-200, Chapter 13 for unsatisfactory performance. The reasons for his proposed action were her inability to follow established rules and regulations and the orders of those in positions of authority to her, 10) the applicant was discharged on 03 August 1987 under the provisions of AR 635-200, Chapter 13, with an under honorable conditions (general) discharge, by reason of unsatisfactory performance.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records provided by the applicant were reviewed. A psychiatric evaluation disposition form dated 01 July 1987 documented that she was "disillusioned" with the military and endorsed "deliberately misbehaving in order to generate cause for administrative separation." It was documented that she endorsed previous suicidal ideation. She was diagnosed with Occupational Problem and Mixed Personality Disorder, with Passive-Aggressive and Histrionic Features. The evaluating provider determined that she met medical retention standards IAW AR 40-501, Chapter 3 and it was recommended that she be considered for administrative separation as deemed appropriate by command, or Chapter 5-13, AR 635-200. On her Report of Medical Examination dated 02 July 1987 for the purposes of Chapter 13 separation, item number 42, psychiatric, was marked 'normal,' though it was also documented that she was tearful. Furthermore, the provider documented "current depression" under summary

of defects and diagnoses. She was medically cleared for separation. On the associated Report of Medical History, she marked 'yes' to the following BH-related items: attempted suicide, frequent trouble sleeping, and depression or excessive worry. It was documented that she had a suicide attempt resulting in hospitalization and subsequent treatment for mental health in June 1987.

d. A review of JLV was void of medical information. There is no documentation indicating the applicant is service-connected through the VA and there were no VA medical records available for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was a victim of Military Sexual Trauma (MST), which is a potentially mitigating event. This Advisor would contend that the applicant's separation due to unsatisfactory performance is mitigated by her history of MST.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported a history of MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant reported she was a victim of MST. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. As there is an association between MST, difficulty with authority figures, and following orders, there is a nexus between applicant's experience of MST and her discharge due to unsatisfactory performance. As such, BH mitigation is supported.

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. Upon review of the applicant's petition, available military records and medical review, the Board notwithstanding the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was a victim of Military Sexual Trauma (MST), which is a potentially mitigating event. However, the Board found insufficient evidence of an error or injustice in her separation proceedings. The Board noted the applicant did not provide supporting documents for clemency consideration. Therefore, the Board denied relief.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported a history of MST.

b. Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant reported she was a victim of MST. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. As there is an association between MST, difficulty with authority figures, and following orders, there is a nexus between applicant's experience of MST and her discharge due to unsatisfactory performance. As such, BH mitigation is supported.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of initial active duty for training (IADT). Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue her a DD Form 214 for the period ending 10 August 1985 showing her character of service as Honorable.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

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 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, paragraph 2-11 reads 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 (Personnel Separations – Enlisted Personnel), sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

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.

b. Chapter 13 provides commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier; or

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale;

(3) It is likely that the member will be a disruptive influence in present or future duty assignments;

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur;

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely; and

(6) The member meets retention medical standards (AR 40-501).

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

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.

//NOTHING FOLLOWS//