

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240008592

APPLICANT REQUESTS: Reconsideration of her previous request for upgrade of her dishonorable discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for service from 28 March 1989 to 13 November 2002
- Medical notes that show she has been diagnosed and received treatment for various illnesses, to include post-traumatic stress disorder (PTSD), and a severe episode of recurrent major depressive disorder
- Veterans Affairs (VA) Form 10-5345a (Individual's Request for a Copy of Their Own Health Information), dated 8 May 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20040001357 on 15 February 2005.
2. The applicant states upgrade is warranted due to all the injustice allowed in her court-martial. She suffers from a major depressive disorder and high blood pressure. She has been in an out of a mental institution.
3. On her DD Form 149 and DD Form 293, the applicant notes PTSD, other mental health, and sexual assault/harassment issues are related to her request.
4. On 28 March 1989, the applicant enlisted in the Regular Army. She reenlisted on 11 September 1992, and 17 May 1996.
5. Before a general court-martial on 4 September 1997, at Fort Polk, LA, the applicant was found guilty of committing involuntary manslaughter, on or about 12 November 1996.

6. The court sentenced the applicant to reduction to E-1, forfeiture of \$900.00 pay per month for 24 months, confinement for three years, and a dishonorable discharge. The sentence was approved on 6 August 1998. However, extending to only so much of the sentence as provided for reduction to E-1, forfeiture of \$900.00 pay per month for 24 months, confinement for 30 months, and a dishonorable discharge. The record of trial was forwarded for appellate review.
7. General Court-Martial Order 149, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK on 16 July 2002, noted that the applicant's sentence had been affirmed and ordered the dishonorable discharge to be duly executed.
8. The applicant was discharged on 13 November 2002. Her DD Form 214 confirms she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 3, Section IV, as a result of court-martial. Her service was characterized as dishonorable. She completed 11 years, 9 months, and 4 days of net active service this period with 672 days of time lost.
9. Additionally, her DD Form 214 shows she was awarded or authorized the Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Ribbon (2nd Award), Expert Marksmanship Qualification Badge with Grenade Bar, Sharpshooter Marksmanship Qualification Badge with Rifle Bar, and Driver and Mechanic Badge with Driver–M (Motorcycle) Bar.
10. The applicant petitioned the ABCMR requesting upgrade of her dishonorable discharge. On 15 February 2005, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of her records.
11. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.
12. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting reconsideration of her previous request for an upgrade of her dishonorable discharge. She contends she experienced military sexual trauma (MST), mental health conditions, and PTSD, which are related to her request for an upgrade. 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 28 March 1989; 2) Before a general court-martial on 4 September 1997, the applicant was found guilty of committing involuntary manslaughter, on 12 November 1996; 3) The applicant was discharged on 13 November 2002, Chapter 3, Section IV, as a result of court-

martial. Her service was characterized as dishonorable. She completed 11 years, 9 months, and 4 days of net active service with 672 days of time lost.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy civilian medical documentation provided by the applicant were also examined.

c. The applicant contends she experienced MST, mental health conditions, and PTSD, which mitigate her misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD, and she does not receive any service-connected disability. The applicant has intermittently received assistance from the VA for homelessness from 2013-2023. The applicant provided hardcopy civilian medical record from her primary care provider, dated 02 November 2024. The applicant had evidence being diagnosed with severe recurrent Major Depressive Disorder and PTSD. However, there was insufficient evidence provided on the history of the symptomatology of these conditions or if they were related to her military service.

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 his 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 was experiencing MST, mental health conditions including PTSD, which mitigate her misconduct. The applicant provided evidence of being diagnosed with Major Depressive Disorder and PTSD in 2024 by a civilian primary care provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing MST, mental health conditions, including PTSD on active service which mitigate her misconduct.

(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 on active service. The applicant noted on her application that MST was related to her request, which per Liberal Consideration, is sufficient for Board's consideration. However, there is no nexus between the applicant's

reported mental health conditions, PTSD, and MST and her misconduct of involuntary manslaughter in that: 1) this type of misconduct is not a part of the natural history or sequelae the applicant's reported mental health conditions, PTSD, and MST; 2) the applicant's reported mental health conditions, PTSD, and MST do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends she was experiencing a mental health condition and an experience that mitigate her misconduct, and per Liberal Consideration her contention 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 partial relief was 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 official 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 his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she was experiencing MST, mental health conditions including PTSD, which mitigate her misconduct. The applicant provided evidence of being diagnosed with Major Depressive Disorder and PTSD in 2024 by a civilian primary care provider.

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(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 on active service. The applicant noted on her application that MST was related to her request, which per Liberal Consideration, is sufficient for Board's consideration. However, there is no nexus between the applicant's reported mental health conditions, PTSD, and MST and her misconduct of involuntary manslaughter in that: 1) this type of misconduct is not a part of the natural history or sequelae the applicant's reported mental health conditions, PTSD, and MST; 2) the

applicant's reported mental health conditions, PTSD, and MST do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends she was experiencing a mental health condition and an experience that mitigate her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being found guilty of committing involuntary manslaughter. The Board noted, the ABCMR is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of her dishonorable discharge to under honorable conditions (general) or honorable. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on her DD Form 214 and recommended that a change be completed to more accurately show her period of honorable service. Therefore, the Board granted partial relief to correct the applicant's records.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

GRANT FULL RELIEF

GRANT PARTIAL RELIEF

GRANT FORMAL HEARING

DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 amend the applicant's DD Form 214 for the period ending 13 November 2002 by adding the following entry in item 18 (Remarks): CONTINUOUS HONORABLE SERVICE FROM 890328 UNTIL 960516.
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 reconsideration of her previous request for upgrade of her dishonorable discharge to under honorable conditions (general) or honorable.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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): N/A

REFERENCES:

1. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Title 10, U.S. Code, Section 1556, 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 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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.
 - b. 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.

c. Chapter 3, Section IV provided that a member would be given a dishonorable pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. 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, 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 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.

8. 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//