

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 May 2025

DOCKET NUMBER: AR20240008862

APPLICANT REQUESTS:

- An upgrade of her under other than honorable conditions character of service to honorable
- To restore her rank/grade to Specialist/E-4
- Pay and allowance
- Decorations and Awards
- Disability discharge
- A personal appearance before the board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter, 22 October 2024, showing she has no service-connected disabilities and pen and ink changes to the information, which indicates her period of service from 24 February 1994 and 21 March 1999 was other than honorable
- Electronic mail message, subject VA summaries and note, 1 May 2025
- Mental Health Evidence Based Practice Post-Traumatic Stress Disorder (PTSD) Processing, Psychology Note, 1 May 2025, showing the applicant mental health sessions included discussions of "sweeping episodes of sexual trauma in an assault under the carpet"; she was diagnosed with PTSD and depression unspecified

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, in effect, she suffered from undiagnosed and unrecognized mental illnesses of bipolar disorder, PTSD, attention deficit hyperactivity disorder

(ADHD), depression, and anxiety. She was a stellar Soldier and had a prior honorable discharge, but because of the events of a traumatic ruptured ectopic pregnancy caused by non-Food and Drug Administration (FDA) approved Anthrax vaccinations and sexual abuse and harassment, her mental state was neglected and ridiculed by higher ranking Service Members. Her immediate chain of command was supportive but was held back by superiors who chose to ostracize her and threaten her career. She never should have been in an all-male Infantry line unit. The male Soldiers did not know how to act nor conduct themselves around females, which triggered many mental issues she did not know she had, nor developed at the time. She was a stellar Soldier in an unfair environment, and she did not receive proper care or treatment. It takes courage and therapy to come forward with the truth, and her military decorations, awards, and service should have signaled a dire situation was taking place at her duty station. She will no longer stay quiet about what she endured or what happened to her. She was mistreated, sexually harassed, and given vaccines that harmed her.

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

a. She enlisted in the Regular Army on 24 February 1994; reenlisted on 22 March 1999 for five years; and obtained the rank/grade corporal (specialist)/E-4.

b. She served overseas in the Republic of Korea from 27 October 1994 to 26 October 1995.

c. Three Personnel Action forms reflect the applicant's duty status changed as follows:

- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 9 February 2000
- From AWOL to PDY, effective 7 March 2000
- From PDY to AWOL, effective 8 March 2000

d. DD Form 616 (Report of Return), 22 September 2000, reflects the applicant's absence began on 8 March 2000 and the applicant surrendered to military control on 22 September 2000.

e. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 28 September 2000 for, without authority, absent herself from her organization from on or about 8 March 2000 until on or about 22 September 2000.

f. On 28 September 2000, she requested separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial

g. Her commander recommended approval and recommended an under other than honorable conditions discharge.

h. On 4 December 2001, the separation authority approved separation; he directed an under other than honorable conditions character of service and she be reduced to rank/grade private/E-1.

i. Accordingly, she was discharged under other than honorable conditions on 21 December 2001; she completed 7 years, 2 months, and 13 days net active service this period, with excess leave for 449 days from 29 September 2000 to 21 December 2001. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- She was awarded:
 - Army Commendation Medal (3rd Award)
 - Army Achievement Medal (2nd Award)
 - Army Good Conduct Medal
 - National Defense Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon
- She had lost time under U.S. Code Title 10, section 972, from 9 February 2000 to 6 March 2000 and 8 March 2000 to 21 September 2000 (225 days)

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

5. In reaching its determination, the Board can consider the applicant's petition and his 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 the following: 1) an upgrade of her under other than honorable conditions (UOTHC) character of service to honorable, 2) to restore her rank/grade to Specialist/E-4, 3) pay and allowance, 4) decorations and awards, and 5) disability discharge. On her DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment are related to her request. More specifically, she contends that due to the events of a traumatic ruptured ectopic pregnancy and sexual abuse and harassment, her mental state was "neglected and ridiculed by higher ranking service members." 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 24 February 1994, 2) court-martial charges were preferred against the applicant on 28 September 2000 for absenting herself from her organization from on or about 08 March 2000 until on or about 22 September 2000, 3) on 28 September 2000, she requested separation under the provisions of AR 635-200, Chapter 10 In Lieu of Court-Martial, 4) the applicant was discharged on 21 December 2001 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, with a separation code of KFS and reentry code of '4.'

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited in-service medical records were available for review via JLV from 28 May 1997 through 09 February 1998, six notes in total. The available in-service medical records were void of any BH diagnosis or treatment history.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. A VA psychiatry intake note dated 20 September 2024 documented that the applicant reported a history of Unspecified Mood Disorder, Attention Deficit/Hyperactivity Disorder (ADHD), and Generalized Anxiety Disorder. She stated that most of her symptoms resulted from Military Sexual Trauma (MST) and that she went AWOL after feeling that no one was helping to protect her from the person who mistreated her. She reported experiencing nightmares, flashbacks, hypervigilance, and difficulty feeling positive emotions. The evaluating provider documented that she met criteria for PTSD due to MST. At the time of the encounter, she was also diagnosed with Unspecified Mood Disorder, Generalized Anxiety Disorder, and ADHD, by history. A VA psychology note included as part of the applicant's application dated 01 May 2025 shows she was undergoing evidence-based treatment for PTSD (Cognitive Processing Therapy). The diagnoses were documented as PTSD, Chronic and Depression, Unspecified.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD due to MST, which is a potentially mitigating condition. Her VA records show she has also been diagnosed with Unspecified Mood Disorder, Unspecified Anxiety Disorder, Generalized Anxiety Disorder, and Unspecified Depressive Disorder; however, the onset of the conditions were not specified or associated with her military service. This Advisor would contend that her misconduct of going AWOL is mitigated by her diagnosis of PTSD due to MST.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed by a VA provider with PTSD due to MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed by a VA provider with PTSD due to MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's in-service medical records were void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed and initiated treatment through the VA for PTSD due to MST. As there is an association between avoidance behaviors and trauma, there is a nexus between the applicant's misconduct of going AWOL and her diagnosis of PTSD due to MST. As such, BH mitigation is supported.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. Based upon the lengthy period of honorable service completed prior to any misconduct, the misconduct involved, the mitigating evidence found in the medical review, the Board concluded that upgrading the applicant's characterization of service to Honorable was warranted.

Additionally, based upon the available documentation, the Board made the following findings related to the applicant's other requested relief:

- Restore her rank/grade to Specialist/E-4: GRANT, based upon the cause of the applicant's reduction in rank being only as a result of receiving an OTH separation and this board upgrading that action, the Board recommended changing the applicant's DD Form 214 to reflect SPC/E4
- Pay and allowance: DENY, based upon the lack of specific pay and allowances being sought by the applicant.
- Decorations and Awards: DENY, based upon the lack of evidence showing the applicant was awarded an award and/or decoration which is not currently reflected on her DD Form 214
- Disability discharge: DENY, based upon the lack of evidence showing the applicant had a condition which failed retention standards during her period of military service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 reissuing the applicant a DD Form 214 showing:

- (block 4a) Grade, Rate or Rank: SPC
- (block 4b) Pay Grade: E4
- (block 24) Characterization of Service: Honorable

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 all other requested relief by the applicant.

//SIGNED//

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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. 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.

3. Title 10, U.S. Code, section 1556 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.

4. 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.

5. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

(3) Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-3f(1), states enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of

the DES (see AR 635-200). If the Soldier is in the DES process, the applicant's DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

6. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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. 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. An under other than 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.

d. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be uncharacterized.

7. 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 PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

8. 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.

9. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a

court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//