

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240009225

APPLICANT REQUESTS:

- An upgrade of her uncharacterized discharged
- A correction of pay and allowances
- A correction of performance/evaluations/derogatory information
- A disability discharge

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)
- NGB Form 22 (Department of the Army and The Air force National Guard Bureau Report of Separation and Record of Service)
- Self-Authored Statement
- Army National Guard Retirement Points History Statement
- Health Record Chronological Record of Medical Care
- Report of Medical Examination, 24 August 1989
- Report of Medical History, 24 August 1989
- Health Record
- Report of Mental Status Evaluation, 18 May 1990
- Résumé
- University of Arkansas Letter, 9 January 2024
- Two Arkansas Substance Abuse Certification Board Letters, show the applicant is a registered counselor in training
- C.A. Brunson Consulting Letter, 25 April 2024, recommending the applicant to be an Arkansas Certified Alcohol and Drug Counselor (CADC)
- Mr. D. M., Licensed Clinical Social Worker, Letter, 29 April 2024, recommending the applicant for the Arkansas Substance Abuse Board
- Ms. C.Y. Letter, 22 April 2024, recommending the applicant to be a CADC
- Two Better Community Development, INC, Letters of Recommendation
- Philander Smith College Bachelor of Social Work Degree, 7 January 2023
- Relias and MidSouth Training Academy, Official Transcripts

- Certificates of Completion: Basic Life Support, Nonviolent Crisis Intervention, Basis Behavioral Threat Assessment, Drug Abuse Prevention, Stop Overdose, LGBTQIA+? An Introduction to Language and Terminology, Rx Drug Abuse Prevention, Spiritually in Recovery, Opioid Overdose Prevention, Women's Council on African American Affairs, Inc., Motivational Interviewing, Calming an Overactive Brain, and Moving the Mountain: Engaging Faith-Based Prevention Treatment & Recovery Communities
- Ms. P.M., Ms. R.W., Mr. L.C., and Ms. F. D., letters attesting to the applicant's struggle with depression and decline in mental health, which was caused by military experiences
- Jefferson Regional Medical Center, 18 June 2024, showing the applicant was admitted on 16 May 2019 and was discharged on 17 May 2019, with a diagnosis of major depressive disorder, single episode, severe with psychotic features: suicidal ideations, cannabis abuse, uncomplicated, and other long term (current) drug therapy

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, at the time there was not a name for post-traumatic stress disorder (PTSD). Being as young as she was, it was traumatizing to her when videos were played and she was told she would have to kill women and children, wear a gas mask, and take the risk of being blown up by bombs or shot. She enlisted in the Army National Guard in 1988 while in the Job Corps. Once she completed basic training, they were activated to participate in the war in Saudi Arabia. During this time, their training was rushed and became very intense. They watched movies about wars in other countries of mostly young children, who were armed, and pregnant mothers. She and other Soldiers went through the gas chamber as part of this preparation for the war. The applicant stood by and watched her colleagues gag and pass out. She shut down and could no longer perform her duties and this changed her forever. During this time, there was no time for education and counseling, something she could have benefitted from. After all the fines and Article 15s, the applicant was discharged and sent home. She soon found out she was traumatized and suffered from post-traumatic stress disorder (PTSD) and began medical treatment for the condition. She worked as a fast food waitress, obtained certifications and a bachelor's degree, and began her own business. The applicant's complete statement, which was submitted with the application is available for the Board's review.

3. The applicant's Official Military Personnel File is unavailable for the Board's review; however, the applicant provided documents described below, which show:

a. She enlisted in the Texas Army National Guard (TXARNG) on 24 August 1989.

b. The specific facts and circumstances concerning the events leading to her discharge are unavailable. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant entered active duty on 27 March 1990 and was released from active duty training on 1 June 1990, under the provisions (UP) of Army Regulation (AR) 635-200, (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c, due to Misconduct (Commission of a Serious Offense), with an uncharacterized character of service. The form also shows she completed 2 months and 5 days net active service with 7 months and 3 days total prior inactive service.

c. NGB Form 22 (Department of the Army and the Air force National Guard Bureau Report of Separation and Record of Service) shows the applicant was discharged from the TXARNG on 1 June 1990, with an uncharacterized characterization of service. She completed 9 months and 8 days of net service for the period.

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 a change to her from uncharacterized discharge to honorable, and she requested a medical discharge. She contends her experience of mental health conditions including PTSD are related to her requests. 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 Texas Army National Guard (TXARNG) on 24 August 1989; 2) The specific facts and circumstances concerning the events leading to her discharge are unavailable. The applicant's DD214 shows she entered active duty on 27 March 1990 and was released from training on 1 June 1990, Chapter 14, paragraph 14-12c, due to Misconduct (Commission of a Serious Offense), with an uncharacterized character of service. She completed 2 months and 5 days net active service this period and 7 months and 3 days total prior inactive service; 3) The applicant was discharged from the TXARNG on 1 June 1990, with an uncharacterized character of service. She completed 9 months and 8 days net service this period.

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 military and civilian hardcopy medical documentation provided by the applicant were also examined.

c. The applicant asserts she was experienced mental health conditions including PTSD while on active service, which mitigates her misconduct and warrants an honorable medical discharge. There is insufficient evidence the applicant reported any mental health symptoms or was diagnosed with a mental health condition including PTSD while on active service. She underwent a Mental Status Exam as part of her administrative separation proceedings on 18 May 1990. She was not diagnosed with a mental health condition, and she was cleared from a psychiatric perspective for procedures deemed appropriate by command. There was insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, required inpatient psychiatric treatment, was placed on a permanent psychiatric profile for a mental health condition including PTSD, or was ever found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD by the VA. The applicant does not currently receive any service-connected disability. In 2024, the applicant began to engage in behavioral health treatment at the VA, and she has been treated for symptoms of anxiety, depression, and she reported a history of PTSD. The applicant also provided civilian medical documentation, dated 2019 from Jefferson Medical Center. There is sufficient evidence the applicant has been treated for anxiety, depression, and suicidal behavior. The applicant reported a history of PTSD, but there is insufficient evidence the applicant's history of symptomatology is attributed to her active 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 her misconduct or warrants an honorable medical discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced mental health conditions including PTSD that mitigates her misconduct and warrants a medical discharge. The applicant has been treated by civilian and VA providers for anxiety, depression, and symptoms of PTSD.

(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 and warrants a medical discharge.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. In addition, there is insufficient evidence the applicant's case warrant's a referral to DES to be assessed for a medical discharge due to the insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, required inpatient psychiatric treatment, was placed on a permanent psychiatric profile for a mental health condition including PTSD, or was ever found to not meet retention standards from a psychiatric perspective while in active service. In addition, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends she was experiencing a mental health condition that mitigates her misconduct, and per Liberal Consideration her 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. 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. The Board considered the medical records and conclusions of the advising official. The Board noted there is insufficient evidence the applicant's case warrant's a referral to DES to be assessed for a medical discharge due to the insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, required inpatient psychiatric treatment, was placed on a permanent psychiatric profile for a mental health condition including PTSD, or was ever found to not meet retention standards from a psychiatric perspective while in active service. The Board determined there is insufficient evidence that shows a medical discharge was warranted during his period of active service.

2. The Board concurred with the advisory official finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board agreed there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. The applicant provided no

evidence of events that led to her discharge, post-service achievements, or letters of reference in support of a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

3. The Board considered the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced mental health conditions including PTSD that mitigates her misconduct and warrants a medical discharge. The applicant has been treated by civilian and VA providers for anxiety, depression, and symptoms of PTSD.

(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 and warrants a medical discharge.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. In addition, there is insufficient evidence the applicant's case warrant's a referral to DES to be assessed for a medical discharge due to the insufficient evidence the applicant engaged in six months or more of behavioral health treatment without improvement, required inpatient psychiatric treatment, was placed on a permanent psychiatric profile for a mental health condition including PTSD, or was ever found to not meet retention standards from a psychiatric perspective while in active service. In addition, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends she was experiencing a mental health condition that mitigates her misconduct, and per Liberal Consideration her contention alone is sufficient for the board's consideration.

4. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. As such, the DD Form 214 properly shows her service as uncharacterized and there is no available service record with derogatory information which requires removal.

5. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request. Based upon a preponderance of

evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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:

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. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) set forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Entry-level status for Regular Army Soldiers, at the time of separation, was defined as the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service. Department of Defense Instruction (DoDi) Number 1332.14, updates the definition of "entry level status," specifically extending its duration. Entry-level status: Upon enlistment, a Service member qualifies for entry-level status during: The first 365 days of continuous active military service; or the first 365 days of continuous active service after a service break of more than 92 days of active service.

5. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may

reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

6. 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.

7. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10

or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

c. Reserve Component Soldiers who do not meet medical retention standards may request continuance in active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

8. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

9. 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.

10. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//