

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240009269

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge.
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states she failed to report as ordered to Germany due to psychological trauma from a sexual assault prior to leaving her previous post located at Fort Stewart, GA. When she attempted to report the assault by a 2nd lieutenant from another company she was encouraged to just report to her new base and move. She returned home on leave with the intention to report to Germany, but she continued to have issues with what she discovered through the years was PTSD. She never reported and just went on with her life. She acknowledges that was not the best way to handle the situation. She would like to have her service record upgraded to appropriately represent the situation.

3. The applicant provides d DD Form 214 for her active service from 30 October 1979 through 30 June 1987.

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

- a. She enlisted in the Regular Army on 30 October 1979.

b. On 5 March 1987, a DA Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for on or about 30 March 1987. The applicant went absent without leave (AWOL) from 23 August 1981 until on or about 10 December 1985.

c. On 16 March 1987, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant's rank was listed as specialist private (PVT)/E-1. She acknowledged:

- she was making the request of his own free will
- maximum punishment
- she was guilty of at least one or more of the charges against him or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if she request for discharge was accepted, she may be discharged under other conditions other than honorable
- she would be deprived of many or all Army benefits, she may be ineligible for many, or all benefits administered by the Veterans Administration
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- she may expect to encounter substantial prejudice in civilian life

d. On 31 March 1987, the separation authority approved the applicant's request for discharge for the good of the service. She would be issued an Under Other Than Honorable Conditions Discharge Certificate. She will immediately be reduced to the lowest enlisted grade.

e. Orders 113-957, dated 15 June 1987, discharged the applicant from active duty with an effective date of 30 June 1987.

f. On 30 June 1987, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 3 years, 4 months, and 11 days of active service with 1871 days of lost time. She was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Court-Martial," with reentry code 3, 3B, 3C. It also shows she was awarded or authorized:

- Army Service Ribbon

- Marksman Marksmanship Qualification Badge with Rifle (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade

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

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

7. 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.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her Under Other Than Honorable Conditions (UOTHC) characterization of service. On her DD Form 149, the applicant indicated that Sexual Assault/Harassment is related to her request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 30 October 1979, 2) a DA Form 458 dated 05 March 1987 shows court-martial charges were preferred on the applicant showing that the applicant went absent without leave (AWOL) from 23 August 1981 until on or about 10 December 1985, 3) On 16 March 1987, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of AR 635-200, Chapter 10, 4) the applicant was discharged on 30 June 1987, with a separation code of KFS, narrative reason for separation listed as "For the Good of the Service-In Lieu of Court-Martial," and a reentry code of 3, 3B, 3C.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service records. There were no medical records available for review. 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. There were no in-service medical records available for review. The applicant's available service records were reviewed. The applicant's Record of Assignments (unnumbered form) shows she reported to Ft. Stewart, GA on 25 March 1980 and was listed as enroute to Germany on 17 July 1981. Beginning 22 August 1981, the record indicated "in transit to assigned not join" and on 23 August 1981 "assigned not joined to AWOL."

d. A review of JLV was void of medical information and the applicant is not service-connected through the VA for any conditions. It is of note that her UOTHC discharge renders her ineligible for VA clinical services.

e. On her DD Form 149, the applicant stated that she failed to report to her assignment in Germany due to "psychological trauma from a sexual assault prior to leaving her previous post located at Fort Stewart GA." She further stated that she attempted to report the assault, which she said was perpetrated by a Second Lieutenant from a different company but was encouraged to report the assault at her new duty station and "move on." The applicant said she had gone home on leave with an intention to report as ordered but she "continued to have issues with what I have discovered through the years was PTSD." The applicant noted she never ended up reporting the assault.

f. A memorandum from the Criminal Investigation Division (CID) dated 04 December 2024 indicated that a search of the Army criminal file indexes revealed no sexual assault or domestic violence investigations pertaining to the applicant.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a potentially mitigating event in-service. This Advisor would contend that the applicant's history of Military Sexual Trauma (MST) mitigates her misconduct of going AWOL.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends her misconduct was due to MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service or post-discharge medical records available for review. In her application, the applicant reported a history of MST, which she stated occurred prior to her assignment to Germany. 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 trauma and avoidance behavior, there is a nexus between the applicant's experience of MST and her misconduct of going AWOL. 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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the length of the AWOL offense leading to the applicant's separation, the Board concluded that any mitigation given as part of the findings in the medical review would be outweighed by the misconduct. Therefore, the Board recommended denying relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :    | 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.

//SIGNED//

X

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy

changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//