

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240009663

APPLICANT REQUESTS: her uncharacterized service be changed to honorable and an appearance before the Board in person or via video or telephone.

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

DD Form 149 (Application for Correction of Military Record), 6 May 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 states she believes she was court-martialed but never had a trial as an incident occurred on the evening of graduating from basic training. She did not receive her orders to her next duty station and was verbally intimidated by an officer, eventually being out processed and sent home. While she waited for her orders, she was sexually assaulted by a male enlisted personnel but was too afraid to report it. Her true intentions were to serve her country but because of incorrect personnel records her enlistment was falsified and her opportunity was taken away. She believes her civil rights were violated and this resulted in a cover-up to remove her from her position as a Soldier.
3. On her DD Form 149, she annotates sexual assault/harassment is related to this request.
4. The applicant enlisted in the Regular Army on 2 October 1986, for a 4-year period.
5. The applicant accepted nonjudicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ) on 14 November 1986, for being disrespectful in language towards a noncommissioned officer. Her punishment imposed was restriction for 7 days.

6. On 9 December 1986, the applicant's immediate commander notified her of his intent to initiate action to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 11 (Entry Level Status Performance and Conduct). The commander cited the applicant's inability to maintain discipline as the reason for the proposed separation.

7. The applicant acknowledged receipt of the proposed separation notification. She consulted military counsel and was advised of the basis for the contemplated action and its effects; of the rights available to her; and the effect of any action to waive her rights. In a self-authored statement, dated 11 December 1986, the applicant stated she did not want to be discharged and disagreed with the assessment of her showing a lack of discipline. She stated the following:

a. She responded to her article 15 for being disrespectful in language towards a noncommissioned officer, where she stated she replied with "I am sick of you too" after her drill sergeant said he was "sick of her". She apologized for her response; however, believed her statement was because of the pressure and humiliation she felt.

b. She discussed her passing of basic training, and meeting another Soldier at the Cadence Club, where an investigator approached her and the other Soldier and insinuated, they had been smoking pot. She stated she was not a drug abuser, nor had she had any drug contact. She was not charged with the use or possession of marijuana.

c. She was proud to serve in the Army and serve her country. Additionally, she addressed her graduating basic training with honors and did not feel it was right to be recommended for discharge from the Army.

8. The applicant's intermediate commanders recommended approval of the proposed separation on 10 December 1986.

9. On 16 December 1986, she accepted nonjudicial punishment under Article 15, of the UCMJ, for wrongfully using marijuana, a controlled substance.

10. The separation authority approval memorandum is void in the applicant's official military personnel file. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 25 January 1987, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level performance and conduct. Her service was characterized as entry level status. She completed 3 months and 22 days of net active service.

11. On 3 March 2025, in the processing of this case, the U.S. Army Criminal Investigation Division (CID), searched their criminal file indexes, which revealed no CID and/or Military Police sexual assault records pertaining to the applicant.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her characterization of service be changed from uncharacterized to honorable. On her DD Form 149, the applicant indicated Sexual Assault/Harassment was 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 02 October 1986, 2) she received nonjudicial punishment (NJP) on 14 November 1986 for being disrespectful in language towards a noncommissioned officer (NCO), 3) on 09 December 1986, the applicant's commander notified her of his intent to initiate action to separate her under the provisions of AR 635-200, Chapter 11 (Entry Level Status Performance and Conduct) with the reason for the proposed action noted as the inability to maintain discipline, 4) in a self-authored statement dated 11 December 1986, the applicant stated she did not want to be discharged and disagreed with the assessment of her showing a lack of discipline. Regarding her Article 15 for being disrespectful in language towards a noncommissioned officer.

b. She apologized; however, believed her statement was because of the pressure and humiliation she felt. She also discussed her passing of basic training, and meeting another Soldier at the Cadence Club, where an investigator approached her and the other Soldier and insinuated, they had been smoking pot. She stated she was not a drug abuser, nor had she had any drug contact. She was not charged with the use or possession of marijuana, 5) on 16 December 1986, the applicant accepted NJP for wrongfully using marijuana, 6) The separation authority approval memorandum is void in the applicant's official military personnel file. Her DD Form 214 shows she was discharged on 25 January 1987, under the provisions of AR 635-200, paragraph 11-3a, by reason of entry level performance and conduct. Her service was characterized as entry level status. She completed 3 months and 22 days of net active service, 7) a memorandum from the U.S. Army Criminal Investigation Division (CID) dated 03 March 2025 shows a search of their criminal file indexes revealed no CID and/or military Police sexual assault records pertaining to the applicant.

c. 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.

d. There were no in-service medical records available for review.

e. A review of JLV shows the applicant is not service connected through the VA for any conditions and there were no VA medical records available for review.

f. Post-discharge medical records through Military Treatment Facilities (MTF) were available for review in JLV from 24 June 2011 through 16 September 2013. There were no BH-related medical records available for review in JLV and review of her problem list did not reveal any history of BH diagnoses.

g. On her DD Form 149, the applicant asserted that she was court-martialed but did not have a trial as an incident occurred on the evening she graduated from basic training. She further noted that she was not given her orders to her next duty station to Ft. Benning and was verbally intimidated by an officer. The applicant stated that while she was waiting to get her orders she was "sexually assaulted by a male enlisted personnel but was afraid to report it."

h. As part of her service records, in her response to the recommendation for separation under the provisions of AR 635-200, Chapter 11, the applicant noted that she graduated from basic training on 05 December 1986. She also stated that she did not receive any counseling during basic training aside from one NJP, as previously mentioned in the ROP, for being disrespectful in language to an NCO. Additionally, the applicant reported following the NJP and completion of her punishment, she continued to excel in Basic Training.

i. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant experienced MST in-service, which is a potentially mitigating event. However, as the date of the MST was not available for review, a nexus cannot be established between the misconduct that led to her discharge and her history of MST. Thus, BH mitigation is unclear.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was a victim of 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? Unclear. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. There is an association between difficulty with authority figures, self-medicating with substances, and MST. Provided there was more information regarding when the MST occurred, as it was only specified that it happened when she was awaiting orders to her next duty station, a possible nexus could be established between MST and her offenses of being disrespectful in language to an NCO and marijuana use. However, as there is insufficient information regarding when the MST occurred, a nexus cannot be established between the misconduct that led to her discharge and her history of MST. As such, BH mitigation is unclear.

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. 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. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding sufficient evidence that the applicant experienced MST in-service, which is a potentially mitigating event.

2. The Board, notwithstanding the medical opine, the Board determined there is insufficient evidence to support the applicant's contentions for her uncharacterized service be changed to honorable. The Board found there is insufficient information regarding when the MST occurred, a nexus cannot be established between the misconduct that led to her discharge and her history of MST. The Board noted the applicant completed 3 months and 22 days of net active service obligation and did not complete training and was released from active duty by reason of entry level performance and conduct. 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 for upgrade of her uncharacterized character of service. Therefore, the Board denied relief.

3. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

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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. Section 1556 of Title 10, U.S. 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 ABCMR 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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. Army Regulation 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 was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor

disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier were in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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//