

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010431

APPLICANT REQUESTS:

- Reconsideration of her previous request for an upgrade of her under other than honorable conditions discharge to an honorable or general under honorable conditions
- An appearance before the Board in person or via video and/or telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 AR20190009376 on 13 April 2021.
2. The applicant states she could not stop the things that she was going through; she even tried going to the military police on duty. She suffered and is still suffering from the trauma.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 6 July 2001.
 - b. The complete facts and circumstances surrounding her separation are not available for review and the specific charge or charges are not in file.
 - c. On 8 January 2003, she requested separation under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, discharge in Lieu of Trial by Court-Martial.
 - d. Her chain of command recommended approval and recommended an under other than honorable conditions discharge.

e. On 16 January 2003, the separation authority approved separation; he directed a Under Other Than Honorable Conditions discharge and reduction to the lowest enlisted grade, private E-1.

f. The applicant was discharged on 28 January 2003. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Chapter 10 of AR 635-200, for "In Lieu of Trial by Court-Martial" with an under other than honorable conditions character of service, Separation Code KFS, and Reentry Code 4. She completed 1 year, 6 months and 23 days. She was awarded or authorized the:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

4. On 7 November 2003, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that she was properly and equitably discharged. Accordingly, her request for a change in the type and nature of her discharge was denied

5. In her previous request (AR20190009376) on 29 June 2021, after reviewing the application and all supporting documents, the Board determined the overall merits of her case were insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

6. On 8 April 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding MST and no records were found.

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. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service from under other than honorable conditions (UOTHC) to something more favorable. She contends she experienced an undiagnosed mental health condition, including PTSD, and sexual assault/harassment (MST) that mitigates her misconduct.

b. 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:

- The applicant enlisted into the Regular Army on 6 July 2001.
- The complete facts and circumstances surrounding her separation are not available for review, and the specific charge or charges are not in file.
- On 8 January 2003, she requested separation under the provisions of Army Regulation 635-200, Chapter 10, discharge in Lieu of Trial by Court-Martial.
- The applicant was discharged on 28 January 2003 and completed 1 year, 6 months and 23 days.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she tried several times to stop the trauma, which led to her discharge. She indicated PTSD and MST as issues or conditions related to her request. The application was void of any mental health or medical records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed an Initial PTSD Disability Benefits Questionnaire (DBQ) was conducted on 19 November 2019, and she reported depression and sleep difficulty. She described relationships she had with two men while stationed in Korea, one of which she characterized as abusive, but the evaluator did not find any mental health related diagnoses and did not attribute her current symptoms to her time in service. She is not service connected for any conditions.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change to the applicant's characterization of discharge because of the absence of the specific facts and circumstances surrounding her discharge processing.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed PTSD and experienced MST at the time of the misconduct. No mental health records were included in her application, and a review of VA records showed no service connection or mental health diagnoses.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant asserts a fully mitigating behavioral health experience, MST, and she indicated PTSD as a mitigating factor. However, without knowledge of the basis for separation, no opinion regarding mitigation under liberal consideration can be made.

g. However, the applicant contends she was experiencing a mental health condition or an experience that mitigates 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 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 her characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board found concurred with the advising official opine based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change to the applicant's characterization of discharge because of the absence of the specific facts and circumstances surrounding her discharge processing.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed PTSD and experienced MST at the time of the misconduct. No mental health records were included in her application, and a review of VA records showed no service connection or mental health diagnoses.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant asserts a fully mitigating behavioral health experience, MST, and she indicated PTSD as a mitigating

factor. However, without knowledge of the basis for separation, no opinion regarding mitigation under liberal consideration can be made.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant provided insufficient evidence of post-service honorable conduct that might have mitigated the discharge characterization. The Board noted without the facts and circumstances surrounding the applicant's discharge, they found that all due process protections were afforded the applicant and that the processing of her discharge was done within regulatory guidelines and standards. Furthermore, 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 under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge or honorable. Therefore, the Board found reversal of the previous Board determination is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

| | | | |
|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20190009376 on 13 April 2021.

[REDACTED]

[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.

REFERENCES:

1. 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.

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.

2. 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.

3. 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.

4. 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.

5. Army Regulation 635-8 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clearcut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Block 12a; Date Entered Active Duty This Period. Data sources are enlistment contract(s), initial order to active duty, active duty order, previously issued DD Forms 214, DA Form 1506 (Statement of Service – For Computation of Length of Service for Pay Purposes), and a complete review of the Soldier's official record. Enter the beginning date of the continuous period of active duty for issuance of this DD Form 214, for which a DD Form 214 was not previously issued.

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

a. 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. 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. Under Other Than Honorable Conditions states a discharge under other than honorable conditions are an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. 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.

//NOTHING FOLLOWS//