

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2025

DOCKET NUMBER: AR20240010744

APPLICANT REQUESTS: a correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade from under honorable conditions (general) to honorable
- a change in her narrative reason for separation code with respective separation code
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the U.S.)
- DD Form 214
- Department of Veterans Affairs (VA) Letter, 3 March 2022 – 100% Disability

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 was recruited by the Criminal Investigation Division (CID) and believes she was used. She was an informant who assisted CID and given special treatment. She was not allowed to talk to anyone outside of CID but was subsequently ignored and “thrown away.” She did not receive support from her unit which resulted in multiple sexual harassments. She marked post-traumatic stress disorder (PTSD) , Traumatic Brain Injury (TBI), sexual harassment, reprisal whistleblower, and intimate partner violence/domestic violence on the DD Form 149 as conditions related to her request.

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

- a. The applicant enlisted in the Regular Army on 9 March 1992.

b. On 17 August 1993, she accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for failure to be at her appointed place of duty. Her punishment included reduction to private (PV2), E-2.

c. On 29 September 1993, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. The reasons for his proposed action were due to the applicant's pattern of substandard performance characterized by a disregard for being at her appointed place of duty and failure to follow the guidance and directions of her supervisors.

d. On 1 October 1993, after consultation with legal counsel, she acknowledged the rights available to her and the effect of waiving said rights. She elected to submit a statement on her own behalf.

e. The applicant noted since arriving at the unit she had not received a counseling for her job performance or for disrespecting a noncommissioned officer. She made mistakes and felt she had been "blackballed." She received a counseling statement for missing an appointment that was cancelled and a second counseling for being late to work, but the tardiness was due to a barracks inspection. She had not received a quarterly counseling on job performance nor required improvements. She had received three day passes for her room being perfect but was instead counseled for being late.

f. On 12 October 1993, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended her period of service be characterized as under honorable conditions (general).

g. On 14 October 1993, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, for unsatisfactory performance. She would be issued a characterization of service of under honorable conditions.

4. On 2 November 1993 she was discharged with an under honorable conditions (General) characterization of service. Her DD Form 214 shows she completed 1 year, 7 months, and 24 days of active service. It also shows she was assigned separation code JHJ with the narrative reason for separation listed as "Unsatisfactory Performance," and reentry code 3.

5. On 3 February 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 military sexual trauma and no records were found.

6. 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.

7. 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.

8. In reaching its determination, the Board can consider the applicants petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her under honorable conditions (general) to honorable and associated administrative changes. She contends that she experienced domestic violence, reprisal, military sexual trauma (MST), and mental health disorders including posttraumatic stress disorder (PTSD) that mitigate her misconduct. 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 9 March 1992; 2) On 17 August 1993, she accepted NJP for failure to be at her appointed place of duty; 3) The complete facts and circumstances of her discharge were unavailable for review; 4) The applicant was discharged on 2 November 1993, Chapter 13- unsatisfactory performance. Her character of service was under honorable conditions (General) characterization of service. She completed 1 year, 7 months, and 24 days of active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts she experienced domestic violence, reprisal, military sexual trauma (MST), and mental health disorders including posttraumatic stress disorder (PTSD) that mitigate her misconduct. She reported that she experienced sexual harassment within her unit and felt ostracized and unfairly targeted. There was insufficient documentation regarding any medical or mental health evaluations or treatments during her time in service.

d. A review of JLV revealed that the applicant was connected with active-duty care as a dependent beginning on 17 May 2005 initially for the treatment of anxiety, marital discord, and follow-up care for bipolar disorder. The applicant received continual care for marital counseling and the treatment of depression, anxiety, and bipolar disorder until 11 January 2011 following her divorce from her then husband. The applicant became connected with VA medical and mental health care beginning on 09 March 2012, for the treatment of various medical and mental health disorders. Of these mental health disorders, the applicant was primarily treated intermittently by the VA for bipolar disorder and various depressive and anxiety disorders including PTSD. The applicant is currently 100% VA service-connected for various physical disorders as well as 70% service-connected for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant has reported MST and diagnosed with service-connected PTSD, in addition to being diagnosed with other mental health conditions including depression and bipolar disorder by the VA. While there is sufficient evidence to partially mitigate some of the applicant's misconduct, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of her reported mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced domestic violence, reprisal, mental health disorders including PTSD, and MST, which mitigate her misconduct. There is evidence that the applicant experienced MST and has been diagnosed with mental health conditions including PTSD as a result of her military experience.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced domestic violence, reprisal, MST and resultant mental health conditions to include PTSD while on active service, which mitigate her misconduct. The applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence the applicant has experienced mental health conditions including PTSD and MST related to her military service. The applicant did engage in some erratic behavior such as not reporting to her place of duty, which can be a natural sequelae to MST and PTSD. However, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of her reported mental health condition or experience. However, per Liberal Consideration, the applicant's experience

of MST and resultant mental health conditions alone is sufficient for the board's consideration.

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 pattern of misconduct leading to the applicant's separation and the applicant receiving a General, Under Honorable Conditions Discharge at the time of separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

The Board found the characterization of service equitable and the current narrative reason for separation accurately annotating the justification for the action.

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//

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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. 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

4. Army Regulation 635-8 (Separation and Processing Documents) 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. Paragraph 2-4 (Completing the DD Form 214) provides detail instructions for data required for each block.

- item 26 (Separation Code): obtain correct entries from Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation
- item 28 (Narrative Reason for Separation): this is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1 (Personnel Separation - Separation Program Designator (SPD) Codes)

5. Army Regulation 635-5-1 (Separation Program Designators) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JHJ is listed with narrative reason "Unsatisfactory Performance," under regulatory authority AR 635-200, Chapter 13.

6. 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 DRBs and 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 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.

9. 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//