

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011959

APPLICANT REQUESTS:

- returned to military service
- entitlement to backpay of all entitlements from discharge date to present
- service credit for all time missed towards retirement
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Medical documents – reflective of information pertaining to a psychological evaluation (second opinion) conducted to assess the applicant's psychological fitness for military service; diagnosis indicates that she does not exhibit any diagnosable disorder including previous adjustment and personality disorder
- DA Form 3822 (Report of Mental Status Evaluation), 21 February 2021 – reflective of the applicant being deemed to be fit for duty regarding her psychological well-being
- Email communication – reflective of information pertaining to the initiation and conduct of the applicant's separation board proceedings; denied the attorney's request for a delay
- Miscellaneous documents (awards, citations, character reference letters etc.) – reflective of the applicant's various accomplishments and statements provided by various persons familiar with the applicant's professional performance
- DA Forms 2166-9-1 (Noncommissioned Officer Evaluation Report (SGT)) - reflective of the applicant's professional performance as assessed by members of her immediate leadership
- DD Forms 214 (Certificate of Release or Discharge from Active Duty) – reflective of the applicant's service on active duty from 1 October 2016 – 25 August 2017, 11 November 2017 – 31 August 2018; 22 May 2010 – 21 May 2011, 28 October 2019 – 30 September 2020
- Memorandum – Subject: Command Directed Mental Health Evaluation (MHE) – reflective of the Acting Chief, Department of Behavioral Medicine contention with the submitted documentation to support the applicant's proposed diagnosis; suggested that a second MHE be conducted; refrain from administrative action

- National Guard Bureau Form 22 (Report of Separation and Record of Service) – reflective of the applicant's service in the Army National Guard (ARNG) from 12 March 2008 – 25 August 2021
- Orders Number 1349851, 25 August 2021 – reflective of the applicant being involuntarily separated from the ARNG on 25 August 2021 due to a medical/physical/mental condition
- Memorandums for Record – reflective of the submitted request to review the applicant's electronic medical record (behavioral health); applicant contends that she has an unfounded diagnosis of a personality disorder which prompted subsequent separation actions for a personality disorder; the review provides:
 - provided to clarify an encounter occurring on 21 August 2020
 - the applicant did not undergo either a comprehensive psychodiagnostics evaluation or complete psychological testing to confirm or disconfirm any behavioral health diagnosis or characterological disorder
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 21 May 2018 – reflective of the applicant's election to extend her current enlistment by 6 years
- DA Form 3822, 7 January 2021 – reflective of a further assessment being needed to determine the applicant's fitness for duty; examination required to rule out the applicant's behavioral health diagnosis
- Behavioral Health Counseling, Evaluation and Coordination Services – reflective of a clinical note indicating that she had a demonstrated pattern of behavior consistent with the previous diagnosis of personality disorder, narcissistic and obsessive-compulsive traits; medical evaluation board recommended
- Memorandum – Subject: Separation Proceedings, 29 June 2021 – reflective of the applicant being advised of the Separation Board proceedings to be conducted on 14 July 2021
- Separation Board packet – reflective of all documents submitted in support of her administrative separation to include counseling statements, service school academic evaluation reports, performance evaluation reports, sworn statements etc. Pertinent documents are provided below:
 - Memorandum – Subject: Notification of Separation Proceedings Under Army Regulation (AR) 135-178 – reflective of the applicant being considered for involuntary separation based on patterns of misconduct, commission of a serious offense, unsatisfactory participation/performance and other physical or mental conditions
 - Memorandum – Subject: Notification of Separation Proceedings Under AR 135-178, Chapter 6-7, 9, 11-1b, 11-1c, and 12, Election of Rights – reflective of the applicant exercising her right to consult with counsel
 - Memorandum – Subject: Commander's Report for Separation Under AR'135-178, Chapter 6-7,9, 11-1b, 11-1c, and 12 – reflective of the

commander's recommendation that the applicant be separated prior to reaching her expiration term of service under the provisions of AR 135-178

- Memorandum – Subject: Command Directed Mental Health Evaluation – reflective of the certification that the applicant was evaluated on 16 March 2011, due to unusual behavior and conduct
- Memorandum – Subject: Command Referral for Mental Health Evaluation – reflective of the submitted request for the applicant to undergo a formal mental health evaluation
- Memorandum – Subject: Notification of Commanding Officer Referral for Mental Health Evaluation (Non-Emergency) – reflective of the applicant's commander referring her for a mental health evaluation
- Serious Incident Report – reflective of the applicant's request to speak with the commanding general on 21 August 2020; indicated that she may be suffering from a mental disorder
- Memorandum – Subject: Letter of Instruction - Unexcused Absence from Annual Training (Absent Without Leave- AWOL) – reflective of the applicant being assessed 3 unexcused absences between 4-6 December 2020; directed to attend a unit level counseling board
- Memorandum – Subject: Command Directed Order to Report – directing the applicant to Annual Training on 21 January 2021 and to participate in a Command Directed Behavioral Health Assessment

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 represented by legal counsel provides that:

- the administrative separation board (14 July 2021) was flawed; the findings should be set aside, and the applicant permitted to continue her enlistment through 13 January 2025
- the applicant's command attempted to create an illusion that the applicant had a personality disorder; diagnosed in error in 2011/later retracted; formally affirmed the retraction of the diagnosis in 2020
- procedural errors of note: improper deviation from regulatory guidance; personality diagnosis based upon 10 years of sporadic misconduct; applicant was never referred for a mental health assessment to determine if Post Traumatic Stress Disorder, Depression etc. might have been contributing factors

- improper consideration of spill over evidence (misconduct instances) utilized in determining that the applicant suffered from a personality disorder
- the board collectively coerced the applicant to represent herself before the board despite counsel's request for a continuance
- improper consideration of misconduct from prior periods of service: honorable service during various periods of Active Duty for Operational Support

3. A review of the applicant's service records reflects the following:

- On 12 August 2006 – the applicant enlisted in the NYARNG
- On 13 January 2008 – she was honorably transferred into the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve)
- On 12 March 2008 – she enlisted in the NYARNG
- On 11 July 2013 (Orders Number 192-1001) – she was promoted to sergeant (SGT/E-5), effective 11 July 2013
- On 21 May 2018 – she elected to extend her enlistment in the ARNG by 6 years resulting in a 13 January 2025 expiration term of service date
- On 7 June 2018 – she was dismissed from the Basic Leader Course due to her failure to pass the Army Physical Fitness Test and subsequent retest
- On 20 November 2020 (Orders Number 829892) – she was reduced to specialist (SPC/E-4) due to her failure to complete training
- On 25 August 2021 (Orders Number 1349851) – she was involuntarily discharged from military service due to a medical condition, not a disability effective 25 August 2021, in accordance with National Guard Regulation 600-200 (Enlisted Administrative Separations) Chapter 6 and Army Regulation 135-178 (Enlisted Administrative Separations)

4. The applicant's service record is void of documentation pertaining to her separation.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting to be returned to military service, entitlement to backpay of all entitlements from discharge date to present, and service credit for all time missed towards retirement. Through counsel, in effect, the applicant contends the administrative separation board was flawed and that her “command attempted to create an illusion that the applicant had a personality disorder, diagnosed in error in 2011, and later retracted with a formal retraction of the diagnosis in 2020.” 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 NYARNG on 12 August 2006 and was honorably transferred to the USAR IRR on 13 January 2008, 2) she enlisted in the NYARNG on 12 March 2008, 3) the applicant was dismissed from the Basic Leader Course on 07 June 2018 due to failure to pass the Army Physical Fitness Test, 4) on 20 November 2020, she was reduced to

Specialist due to her failure to complete training, 5) the applicant was involuntarily discharged on 25 August 2021 due to a medical condition, not a disability, in accordance with National Guard Regulation 600-200 (Enlisted Administrative Separations) Chapter 6 and Army Regulation 135-178 (Enlisted Administrative Separations). The applicant's service record is void of documentation pertaining to her separation.

2. 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records included as part of her application and available via JLV were reviewed. The applicant's in-service medical records revealed no behavioral health treatment history; however, she was referred for Command-Directed Behavioral Health Evaluations (CDBHE) on numerous occasions throughout her career.

The applicant first presented to BH on 08 March 2011 requesting a command evaluation for a security clearance as she was planning to initiate a packet for Officer Candidate School (OCS). It was noted that she did not have the proper paperwork and thus an evaluation was not completed. She was not diagnosed with a BH condition.

On 16 March 2011, a Command-Directed Behavioral Health Evaluation (CDBHE) was requested by her command due to "unusual behavior and conduct." More specifically, it was documented that she was referred for an evaluation due to the "manner in which she attempts to solve problems, impatience, interpersonal conflict with peers, failure to follow the chain-of-command, poor judgment, and a disruptive presence to the unit to which she is assigned." It was noted that she had placed a call to the Commander of the SRMC on 22 February 2011 (Brigadier General), and the executive officer who received the call described the applicant as "distraught, hysterical, and in fear for her life," which the applicant denied expressing her concerns in such a manner. She was subsequently referred to BH to ensure her safety. The evaluating provider diagnosed the applicant with Personality Disorder Not Otherwise Specified (NOS) with Narcissistic and Obsessive-Compulsive Traits. The provider attributed what was described as her lack of awareness, poor insight, and poor judgment to a long-standing personality pattern deemed to be pervasive, rigid, and maladaptive, and that negatively impacts her occupational and interpersonal functioning. As supporting evidence, the provider documented that there was a series of emails that depicted her difficulties with NCOs in her command and a willingness to confront them directly. The provider recommended separation from service and documented that she was cleared for administrative proceedings. A Memorandum for the Commander dated 08 July 2011, authored by the Acting Chief of the Department of Behavioral Medicine at BAMC, documented that the CDBHE conducted on 16 March 2011 "did not provide sufficient written documentation

to support the diagnosis proposed at that time.” The authoring provider further discouraged command from taking any administrative action based on that evaluation, and, if desired to pursue administrative action for psychiatric reasons, it was recommended that a second CDBHE be requested.

A DD Form 3349 (Physical Profile) dated 05 October 2011 shows the applicant was placed on a temporary BH profile with the diagnosis noted as “Behavioral Health Issue,” stating the applicant should be evaluated by a mental health professional. On 07 October 2011, she underwent a CDBHE for clearance for administrative separation (chapter unspecified). It was documented that she had volunteered for a mission in Florida and had a variety of problems there. She reported some issues including loaning money to officers and not being reimbursed as well as filing an EO complaint regarding another female Service Member who was the victim of sexual harassment. The evaluating provider administered the OQ-45 (a measure of level of distress used to track treatment progress) and the Millon Clinical Multiaxial Inventory-Third Edition (MCMI-3), a psychological measure used to assess psychopathology, including personality disorders. The test results suggested the applicant had compulsive tendencies, noting a desire to do things correctly and concern when rules are not followed. The provider opined that the applicant’s need to follow rules may have superseded social judgment and the most tactful way for handling situations. It was noted that she did not want to be separated from the Army and as a result was experiencing distress related to the administrative proceedings. She was diagnosed with Adjustment Disorder with Disturbance of Emotions. The provider documented that she met retention requirements and was cleared to participate in administrative proceedings. An SF 600 dated 13 October 2011 shows a second opinion evaluation determined she was fully fit for duty and that her temporary profile was expired.

A Serious Incident Report (SIR) was reported on 21 August 2020. Per her request, the applicant had been escorted to the TARC installation GO suite to speak with a Major General. It was noted that during that time the applicant exhibited a pattern of actions/words that exemplified that she may be suffering from a mental disorder and the General had her company-level leadership contacted to request that a CDBHE be conducted. After the paperwork for the request was completed, the applicant was requested to remove herself from the GO suite, to which she refused three times. PMO officers were requested to remove the applicant from the suite, and she was later transported to the Ft. Belvoir Hospital for an evaluation where she underwent an emergent CDBHE. It was documented the applicant had been moved three times since starting her tour in October 2019 due to complaints of a toxic work environment, and, when offered assistance, did not follow through with offered support or actions. The provider documented her diagnosis as Unspecified Problems Related to Employment, marked her judgment as ‘fair,’ and indicated that no BH profile was needed.

She was released as she was deemed to be not an immediate threat to herself, or others and it was recommended that a non-emergency behavioral health evaluation be requested to complete a more thorough psychological evaluation.

On 17 September 2020, the applicant did not show for a scheduled non-emergent CDBHE following the SIR in August 2020; however, it was documented in the record that the commander had not properly counseled the applicant about her appointment and thus the provider informed command of the counseling and notification requirements for CDBHE's. The applicant was subsequently ordered in writing to complete a CDBHE scheduled for 21 January 2021, which she attempted to cancel/reschedule several times prior to the scheduled date, before no-showing the appointment altogether. The applicant called the clinic on 25 January 2021 requesting to speak with "someone in charge," alleging that her unit had possibly engaged in HIPAA violations. It was recommended she follow-up with command and legal to discuss her concerns. The applicant contacted the BH clinic on 08 June 2021 requesting clarification regarding the documentation about her no-show for 17 September 2020. It was documented that the applicant reported she had already made an IG complaint.

A Documentation Review was conducted on 23 December 2020 by the NYARNG Behavioral Health Specialist (Licensed Clinical Social Worker). It was documented as being completed strictly by chart review and collateral contacts and that the author was not diagnosing the applicant with a condition but providing a clinical opinion. The provider reviewed the applicant's medical and service records and opined that there is a demonstrated pattern of behavior consistent with a previous diagnosis of Personality Disorder NOS, with Narcissistic and Obsessive-Compulsive Traits and that the documentation clearly outlined a nexus and continuation of diagnostic criteria. Thus, the reviewing provider concurred the previous diagnosis of Personality Disorder NOS that was initially diagnosed in 2011. The provider also opined that the founded events of sexual harassment and hostile work environment in 2009 more likely than not exacerbated her condition. The provider recommended that the applicant be referred to a medical evaluation board for a fitness for duty evaluation and, as determined, IDES proceedings. A composite of the applicant's case management records from HRR (MEDCHART) was available for review in JLV. An SF 600 documented BH case management interactions with the applicant from August 2020 through April 2021 which was which was initiated following the SIR in August 2020. As part of the record, the case manager summarized the documentation review that was completed on 28 December 2020, noting the f for a referral to a Medical Evaluation Board and initiation of an S3 profile; however, upon further review, it was documented that the applicant did not have a diagnosis that exacerbated her diagnosis of Personality Disorder and thus a profile would not be initiated. Further communication between the case manager and applicant centered around the applicant inquiring as to how cases were opened for case management purposes, the diagnosis that her case was opened under (F99, which is

used when a specific BH diagnosis is suspected but not known) and requesting a memorandum clarifying that her case was opened using that code, per policy.

A DA 3822 dated 07 January 2021 for the purposes of ruling out a behavioral health diagnosis per AR 135-178, Chapter 6-7d shows the applicant was not diagnosed with a BH condition though noted a history of Personality Disorder Traits (Borderline Personality Disorder and Narcissistic Personality Disorder). The provider documented that further assessment was needed to determine fitness for duty. It was also noted that, due to the applicant repeatedly missing or canceling appointments or being uncooperative when coordinating CDBHE's, it has diminished the ability to assess for fitness for duty. The provider documented that, based on their clinical opinion, the applicant has no co-morbid diagnosis that would enable her to pursue IDES.

The applicant underwent a psychological evaluation conducted by a civilian licensed psychologist on 10 February 2021, which was obtained to offer an independent second opinion regarding her psychological fitness for military service. The evaluating psychologist conducted a comprehensive assessment including measures of psychopathology and cognitive functioning in addition to summarizing and reviewing the applicant's in-service behavioral health history and service records. On one of the assessment tools used during the evaluation, the Personality Assessment Inventory (PAI), a measure of psychopathology, the provider documented that the applicant's response style was consistent with positive impression management and also noted there were no clinical elevations on the measure. Ultimately, the provider concluded that the applicant did not exhibit symptoms consistent with any diagnosable disorder, including her previously diagnosed conditions of Adjustment and Personality Disorder. The applicant's in-service records show she requested a DA Form 3822 on 21 February 2021 as a supplemental form following the civilian comprehensive psychological evaluation she underwent on 10 February 2021. It was documented that she did not meet criteria for a psychiatric condition, was fit for full duty, and was able to understand and participate in administrative proceedings.

4. A review of JLV shows the applicant is not service-connected through the VA for any conditions. The record was void of any BH diagnosis or treatment history through the VA.

5. The applicant's awards and accomplishments were reviewed as part of her service record and demonstrated that she received numerous accolades, medals, Certificates of Appreciation, and accomplishments throughout her career including the Army Reserve Components Achievement Medal, State of New York Certificate of Service, Department of Army Good Conduct Medal (22 May 2010 through 21 May 2011), Global War on Terrorism Service Medal, HQ NYARNG, and New York State Exercise Support Ribbon. The applicant also included numerous letters of recommendation for jobs/ADOS tours she was applying for which had been authored by commanders,

OIC/NCOIC's, and various other personnel she had worked with from 2008 through 2021. The letters generally reflected that she was hard-working, dependable, conscientious, personable, and a team player.

6. Review of the applicant's service records also revealed positive counseling statements on 18 December 2010 and 30 September 2010, documenting that she was helpful to the team and making great progress on her specified job tasks.

7. Several NCOERs were reviewed. The applicant was rated as "highly qualified" for her periods of service from 12 November 2017 through 10 June 2018 and 01 October 2016 through 19 June 2017. For the period of service from 28 October 2019 through 12 July 2020, the applicant was deemed 'not qualified.' The senior rater commented that the applicant had been "promoted beyond her capabilities, lacks maturity, and the ability to take constructive criticism. Despite re-training, [the applicant] is argumentative, fails to grasp proper Army protocols, and is disrespectful. [The applicant] negatively affects office efficiency, mission accomplishment, and is toxic. The worst NCO I have served with in 29 years." A school Service Academic Evaluation Report for the Basic Leadership Course (BLC) dated 07 June 2018 shows she failed to achieve course standards and under leadership it was marked "unsatisfactory."

8. Regarding the applicant's separation proceedings, although the approved separation packet was unavailable for review, some documentation regarding initiation of her separation was available for review. On 10 May 2021, the applicant was counseled regarding consideration for involuntary administrative separation under the provisions of AR 135-178, Chapter 11-1b, 11-1c, Chapter 12, Chapter 9, and Chapter 6-7. The applicant disagreed with the counseling statement and in her rebuttal described it as retaliatory for filing various IG complaints, including ignoring her reports of harassment and retaliation for reporting and requesting to be removed from a group chat due to "ethical and values violations" regarding messages of a sexual, racial, and inappropriate nature. An MFR from 2021 shows the applicant marked 'no,' that she did not file an unrestricted report of sexual assault in which she was the victim in the past 24 months.

On 29 June 2021, it was documented that the applicant was being considered for administrative separation under the provisions of AR 135-178 and that a Board would determine whether she should be separated based on paragraph 11-1b (pattern of misconduct), 11-1c (Commission of a serious offense), 12 (Unsatisfactory Performance in Ready Reserve), 9 (Unsatisfactory Performance), or 6-7 (Other Designated Physical or Mental Conditions).

She was counseled throughout her career on numerous occasions, which were available for review as part of her packet, and the negative counseling statements were summarized in the Notification of Separation Proceedings dated 10 May 2021. The

following were provided as supporting evidence for consideration of separation under each of the previously mentioned chapters.

- For chapter 11-1b, Pattern of Misconduct, it was documented that the the applicant was counseled between August 2010 and August 2020 for the following: altercation with a senior noncommissioned officer (NCO) after being instructed to report for counseling, making inappropriate comments to a registered nurse, refusing to comply with direct orders during an Army Physical Fitness Test, emailing two NCOSs and an officer in a manner that lacked respect, treat with contempt and use disrespectful speech and gestures, as well as being argumentative while being counseled and lacking proper military bearing, several counselings due to speaking/emailing/sending text messages in a manner that lacked respect, both to senior NCOs and commissioned officers, harassing a civilian regarding her tour being curtailed, failure to report to place of duty, and failure to obey orders.
- For consideration of separation due to commission of a serious offense (11-1c), the following counselings were cited as supporting evidence, which were completed between November 2020 and January 2021: treat with contempt and disrespectful language and deportment towards a Senior NCO and commissioned officer, being derelict in duties and willfully refuse to follow a direct order and failed to report (failure to attend a CDBHE ordered by the commander).
- For separation due to Unsatisfactory Performance (Chapter 12), the following was cited: refused to perform assigned duties while on ADOS which resulted in early termination of ADOS orders (25 August 2017), failure to attend J1 inventory training (20 March 2020), approved relief for cause while assigned at NGB-J1-R, from October 2019 through July 2020. On numerous occasions she failed to remain at her assigned duty position and was often seen in unassigned areas, failed to maintain accountability of all government property, and recorded her behavior as argumentative and disrespectful. It was also noted that she absented herself from her place of duty on 21 January 2021 (CDBHE).
- For separation due to Chapter 6-7, Other Designated Physical or mental Conditions, it was noted that she demonstrated a pattern of behavior consistent with a previous diagnosis of Personality Disorder NOS with Narcissistic and Obsessive-Compulsive Traits. The following was cited as supporting evidence: disobeyed a direct order to attend a CDBHE (20 November 2020), and no showed CDBHE scheduled for 21 January 2021. A Record for All Reviewing Authorities dated 18 August 2017 also showed that the applicant had displayed “many acts of insubordination, disrespect, and failure to obey lawful orders. Lack of knowledge, basic customs and courtesies by failure to be at the position of attention when addressing officers and failure to be at the positive parade rest when addressing senior NCOs. Refuses NCO development. ADOS tour was terminated early.”

9. The applicant is petitioning the ABCMR requesting to be returned to military service, entitlement to backpay of all entitlements from discharge date to present, and service credit for all time missed towards retirement. In effect, the applicant contends that she was improperly discharged due to a diagnosis of Personality Disorder NOS. The applicant's records are void of the approved separation packet; however, the available records show that she was discharged due to condition, not a disability, and was in part recommended for separation due to Personality Disorder NOS. Thus, this Advisor cannot conclusively address the reason for separation as being due to a diagnosis of Personality Disorder NOS. However, given the applicant's contention, records, and the diagnosis being one of the proposed reasons for separation, this Advisor will address the request as it pertains to the diagnosis of Personality Disorder NOS and the applicant's fitness for duty.

The applicant's medical records revealed that she was diagnosed with Personality Disorder NOS during a one-time evaluation in 2011, which was later deemed to have been erroneous due to insufficient documentation supporting the rationale for the condition. Thus, the recommendation to command at the time was against basing administrative actions on the diagnosis rendered as a result of that evaluation. Although a licensed behavioral health provider who conducted a documentation review in 2020 provided a clinical opinion agreeing with the previous diagnosis, the applicant was not clinically diagnosed with Personality Disorder by any other behavioral health provider who directly assessed her aside from the initial diagnosis in 2011. Moreover, the applicant underwent psychological testing on two separate occasions, in 2011 and again in 2021, and neither of those evaluations revealed clinically significant elevations indicative of a diagnosis of Personality Disorder [*Advisor's note: it is of note that her initial evaluation did document symptoms consistent with obsessive-compulsive traits and her second evaluation revealed a pattern of responding consistent with positive impression management which often leads to suppression of clinical elevations. Therefore, the absence of clinical elevations on her second evaluation cannot conclusively rule out the presence of a psychiatric condition. It is also of note that the use of psychological testing is not required to diagnose a psychiatric condition, but is often a useful tool as part of a comprehensive psychological evaluation.*]

Based on the available information, it is the opinion of the Agency Medical Advisor that the available evidence is inconclusive regarding whether the applicant met criteria for a diagnosis of Personality Disorder, NOS in-service. The applicant has a well-documented history of interpersonal relationship problems in the military that occurred during at least two separate tours of duty, which serves as supporting evidence for the criteria of being long-standing and pervasive. Her service records also provide evidence that she exhibited behavior that was significantly outside of military cultural expectations (i.e., military bearing, customs and courtesies). Persistent interpersonal relationship

problems and behavior that is significantly outside of cultural expectations are consistent with some of the criteria required for a diagnosis of Personality Disorder. Her medical records are void of a behavioral health diagnosis rendered by a licensed and credentialed behavioral health provider who had directly assessed the applicant around the time of separation. Moreover, there is no evidence of a diagnosis of Personality Disorder NOS before or after service, and, given the pervasiveness of the condition, full remission of the diagnosis is generally not anticipated. While there are some indicators that are consistent with a diagnosis of Personality Disorder, the preponderance of the available clinical evidence demonstrates the applicant was only diagnosed with Personality Disorder on one occasion despite being evaluated by several behavioral health providers over the course of her career. Thus, the presence or absence of a psychiatric diagnosis cannot be definitively concluded at this time given the discrepancy between the behavioral data available in her service records and the absence of supporting clinical documentation. Perhaps more importantly, the clinical opinion provided in 2020 opined that the substantiated events of sexual harassment and hostile work environment in 2009 more likely than not exacerbated her condition. It is also of note that there is evidence the applicant reported filing a complaint at a later date due to her request to be removed from a chat that included messages of a sexual, racial, and inappropriate nature. Thus, it is important to consider the context in which some of applicant's behaviors occurred, particularly the reports of sexual harassment, which may lead to a lack of trust and difficulty with others. Given the totality of the available information, while the presence or absence of a psychiatric condition is inconclusive based on the available information, given history of founded sexual harassment in 2009 which was opined to have impacted her condition, consideration of updating the applicant's narrative reason for separation to "Secretarial Authority" is appropriate based on Liberal Guidance as established by the Kurta Memorandum. Regarding her request to be reinstated into the military, given there were several command-directed referrals for a behavioral health evaluation prior to her separation, coupled with the lack of cooperation in such evaluations which hindered a comprehensive evaluation to determine fitness for duty by a military behavioral health provider, a re-entry code of 'RE-3' would be fair and equitable based on the available information.

10. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A
- (2) Did the condition exist or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, medical advisor's review, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, and available military records, the Board determined the applicant was released from the Army National Guard on 25 August 2021 with an honorable characterization of service, for condition, not a physical disability, and with an RE code of "3".
2. The Board noted that the applicant is petitioning the ABCMR requesting to be returned to military service, entitlement to backpay of all entitlements from discharge date to present, and service credit for all time missed towards retirement. In effect, the applicant contends that she was improperly discharged due to a diagnosis of Personality Disorder NOS. The applicant's records are void of the approved separation packet; however, the available records show that she was discharged due to condition, not a disability, and was in part recommended for separation due to Personality Disorder NOS.
3. Regarding the applicant's separation proceedings, although the approved complete separation packet was unavailable for review, some documentation regarding initiation of her separation was available. On 10 May 2021, the applicant was counseled regarding consideration for involuntary administrative separation under the provisions of AR 135-178, Chapter 11-1b, 11-1c, Chapter 12, Chapter 9, and Chapter 6-7. The Board concurred with the medical advisor's review that the available evidence is inconclusive regarding whether the applicant met criteria for a diagnosis of Personality Disorder, NOS, while in-service. However, given the totality of the available information, while the presence or absence of a psychiatric condition is inconclusive based on the available information, given history of founded sexual harassment in 2009 which was opined to have impacted her condition, consideration of updating the applicant's narrative reason for separation to "Secretarial Authority" is appropriate based on Liberal Guidance as established by the Kurta Memorandum.
4. The Board determined that regarding her request to be reinstated into the military, given there were several command-directed referrals for a behavioral health evaluation prior to her separation, coupled with the lack of cooperation in such evaluations which hindered a comprehensive evaluation to determine fitness for duty by a military behavioral health provider, a re-entry code of 'RE-3' was fair and equitable based on the available information and therefore, did not warrant relief. The Board did determine partial relief was warranted for a change to the narrative reason for separation to reflect Secretarial Authority.

5. Based upon the misconduct leading to the applicant’s separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

6. 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:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's NGB Form 22 for the period ending 25 August 2021 to show for the Narrative Reason for Separation as "Secretarial Authority".

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to returning to military service, with entitlements to backpay from discharge date to present, and service credit towards retirement.



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. National Guard Regulation 600-200 (Enlisted Personnel Management) provides the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG/ARNGUS. Chapter 6 (Enlisted Separations) provides that separation prior to the completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility. Reasonable efforts should be made to identify Soldiers who are likely to be separated early, and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings. Soldiers who do not conform to required standards of conduct and performance and Soldiers who do not demonstrate potential for further military service should be separated to avoid the high costs of continued

service in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

a. Paragraph 6-4 (Medical Processing and Evaluation) provides that medical examinations are required for Soldiers being processed for separation under AR 135-178, paragraphs 6-3, 6-6, and 6-7. In addition to a medical examination, a mental status evaluation is required for Soldiers being processed for separation under AR 135-178, paragraph 6-7.

b. Paragraph 6-23 (Appeal of Discharge) provides that Soldiers administratively discharged from the ARNG and, if applicable, the Reserve of the Army, or discharged by sentence of a special court-martial, may petition for a change to discharge. The appeal petition may address that portion of the discharge concerning the State ARNG discharge. States may grant or deny the appeal. This authority will not be delegated. Changes to the Reserve of the Army portion of a discharge must be submitted to the Army Discharge Review Board.

c. Paragraph 6-24 (Army Board for Correction of Military Records) provides that Soldiers discharged as a Reserve of the Army, who have been discharged administratively in accordance with Army regulations (this term includes National Guard Regulations), or by sentence of courts-martial, may appeal to the ABCMR per AR 15-185 after all other means have been exhausted. This board evaluates the reason for discharge, the procedures followed in accomplishing discharge, and the characterization of service. The purpose and authority of the ABCMR, will be explained during discharge processing, except when the discharge is for immediate reenlistment.

d. Paragraph 6-32 (Notification and Administrative Board Procedures) provides that all involuntary administrative separations require commanders to notify Soldiers concerning intent to initiate separation procedures. Commanders must notify Soldiers who do not meet medical retention standards of the intent to separate and afford them the opportunity to request a waiver for retention per AR 40-501 (Standards of Medical Fitness), or to provide additional information from civilian doctors at their own expense.

3. AR 135-178 (Enlisted Administrative Separations) provides policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers for a variety of reasons. Paragraph 6-7 (Other Designated Physical or Mental Conditions) provides that the separation authority may approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of military duty. Such conditions may include, but are not limited to:

- Airsickness, motion, and/or travel sickness
- Phobic fear of air, sea, and submarine modes of transportation
- Attention-deficit/hyperactivity disorder
- Sleeping walking
- Enuresis
- Adjustment disorder (except chronic adjustment disorder)
- Personality disorder

a. A Soldier may be separated under this paragraph for personality disorder (not amounting to disability) that interferes with assignment to or performance of duty. A personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from cultural expectations, is stable and of long duration, inflexible and pervasive across a broad range of situations, and leads to clinically significant distress or impairment in functioning. The onset of personality disorder is frequently manifested in the early adult years and may reflect an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks or both. As such, observed behavior of specific deficiencies should be documented in appropriate counseling or personnel records. Documentation will include history from supervisors, peers, and others, as necessary to establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the enlisted Servicemember was counseled and afforded an opportunity to overcome the deficiencies.

b. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation. The evaluation will assess whether PTSD, TBI, depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation. The behavioral health provider will document in the electronic medical record the specific diagnostic criteria for the condition used as the basis for the Soldier's separation action in accordance with the most current edition of the Diagnostic and Statistical Manual of Mental Disorders. A statement indicating that the Soldier's disorder is of sufficient severity to interfere with the Soldier's ability to function in the military must be included. The diagnosis must be established by a privileged mental health provider.

c. Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral health conditions are significant contributing factors to the basis for separation but will instead be processed under the Integrated Disability Evaluation System.

d. Separation for personality disorder, or other mental disorder not constituting a physical disability, is not appropriate nor should it be pursued when separation is warranted based on unsatisfactory performance or misconduct. Commanders will not

take action prescribed in this chapter in lieu of disciplinary action solely to spare a Soldier who may have committed serious acts of misconduct for which harsher penalties may be imposed under the Uniform Code of Military Justice. Separation under this paragraph is authorized only if the condition is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired.

e. Separation processing may not be initiated under this paragraph until the Soldier has been counseled in writing formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. The Soldier will also be counseled in writing that the condition does not qualify as a disability.

4. AR 15-185 (ABCMR) paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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. 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; sexual harassment. Boards were directed 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 that misconduct which led to the discharge. The veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge.

6. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

//NOTHING FOLLOWS//