

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 August 2025

DOCKET NUMBER: AR20240013254

APPLICANT REQUESTS: upgrade of her under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 2 pages
- Court order wherein her name was legally changed from D\_J\_J\_ to D\_L\_D\_

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 diagnosed with depression, insomnia, and anxiety prior to her UOTHC discharge. She was not properly informed nor treated for these illnesses which were contributing factors in her separation. The applicant explains in the self-authored statement which is available for the Board's review in supporting documents the following:
  - She was discriminated against for her sexual orientation; at that time she had not transitioned to a male
  - Her punishment was severe
  - She received inequitable punishment compared to other Soldiers
  - She did not receive proper mental health care
  - She served honorably in the U.S. Army Reserve prior to her Regular Army enlistment
3. A review of the applicant's service record reflects the following:
  - a. She enlisted in the Regular Army on 29 June 2004.

- b. On 11 January 2007, she tested positive for cocaine from a specimen collected on 3 January 2007.
- c. On 23 January 2007, she tested positive for cocaine a second time, from a specimen collected on 8 November 2006.
- d. Her commander notified her on 14 June 2007, that he was initiating actions to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. He noted her two positive tests for cocaine.
- e. On 15 June 2007, her commander formally recommended her separation, prior to her expiration term of service, under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense.
- f. On 3 July 2007, she acknowledged that she had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to her.
  - (1) She indicated she further understood that as the result of issuance of a discharge UOTHC, she may be ineligible for many or of all benefits as a Veteran under both Federal and State laws and that she may expect to encounter substantial prejudice in civilian life.
  - (2) She waived consideration of her case by an administrative separation board.
  - (3) She declined to submit a statement in her own behalf.
- g. Consistent with the chain of command's recommendations, the separation authority directed her separation on 6 July 2007, with an UOTHC characterization of service.
- h. The applicant was discharged on 10 July 2007. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct (drug abuse). Her service was characterized as UOTHC. She completed 3 years and 12 days of net active service this period.

4. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

**5. MEDICAL REVIEW:**

a. The applicant is applying to the ABCMR requesting an upgrade of her other than honorable conditions discharge. She contends that she experienced mental health conditions 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 29 June 2004, after honorably completing an 11 month and 14 day period of Activated Army Reserve time from 07 January 2002 to 20 December 2002; 2) On 08 November 2006 and 03 January 2007 the applicant was documented as testing positive in two urinalyses for cocaine; 3) The applicant was discharged on 10 July 2007, Chapter 14-12c(2) misconduct (drug abuse). Her character of service was other than honorable conditions. She completed 3 years and 12 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts she experienced mental health conditions during her time in service that mitigate her misconduct. On 31 October 2005, the applicant initially self-referred to mental health treatment for depression symptoms and insomnia, subsequent to shoulder pain. She reported that prior to referring for treatment, the applicant self-medicated with trazadone, 2 non-narcotic pain medications, and 2 tablets of MDMA. During this visit, she was diagnosed with Amphetamine-Induced Mood Disorder and referred for military substance abuse treatment. On December 2005, the applicant received a substance abuse treatment intake with no further information provided. The applicant had documented regular substance abuse treatment until 25 January 2006. The applicant was inconsistently followed by mental health until discharge, primarily for medication management for the treatment of "depression" broadly, Adjustment Disorder with Mixed Anxiety and Depressed Mood, and "substance use disorders". The applicant was documented as reporting on a number of occasions that her recurrent illicit substance use was in an attempt to self-medicate her symptoms of mental health and physical pain. On 22 February 2007, the applicant was referred for a mental status examination in support of a pending Chapter 14 administrative discharge due to 2 positive urinalyses. During this evaluation the applicant was cleared from a psychiatric perspective to continue administrative separation procedures. On 07 March 2007, the applicant re-connected with substance abuse treatment, without additional information provided. On 17 April 2007, the applicant attended her final documented substance abuse treatment appointment, with no diagnosis or additional information provided. On 19 April 2007, the applicant attended their final mental health visit, which noted that the

applicant was also under the care of an off-base civilian provider for the continued treatment of depression, with no additional information provided.

d. A review of JLV did not reveal any additional results or documentation. The applicant has not been diagnosed with a service-connected mental health condition and does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a mental health condition or experience that mitigates her misconduct. The applicant noted her substance use was as a result of her attempt to self-medicate her mental health and physical pain symptoms. The applicant was offered and received substance use treatment as well as accompanying mental health treatment, which included the treatment of depression. As a result, there is sufficient evidence for consideration for mitigation per the Liberal Consideration Policy.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions during her time in service, which mitigates her misconduct. The applicant was diagnosed and treated for substance use disorders and mental health symptoms including depression broadly. The applicant was followed by both mental health and substance abuse treatment intermittently beginning 31 October 2005, until her separation. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions while on active service. The applicant was diagnosed and treated for substance use disorders and mental health symptoms including depression broadly. The applicant was followed by both mental health and substance abuse treatment intermittently beginning 31 October 2005, until her separation. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant was identified, diagnosed with, and treated for substance use disorders and mental health conditions that occurred during military service. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review. However, the applicant did engage in avoidant and erratic behavior during active service such as utilizing illicit drugs on a number of occasions. These behaviors can be a natural sequela to some mental health

conditions, including depression and anxiety. As a result, there is sufficient evidence for consideration for mitigation per the Liberal Consideration Policy.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct under the provisions of Army Regulation 635-200, chapter 14-12c (Commission of a Serious Offense). The advisory stated the applicant used illegal drugs to mask her mental health issues and physical pain, and she was offered and received substance use treatment as well as accompanying mental health treatment, which included the treatment of depression. As a result, there is sufficient evidence for consideration for mitigation per the Liberal Consideration Policy. The Board concurred with the medical advisory and determined an upgrade of her characterization of service was warranted from UOTHC to under honorable conditions (general).

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions during her time in service, which mitigates her misconduct. The applicant was diagnosed and treated for substance use disorders and mental health symptoms including depression broadly. The applicant was followed by both mental health and substance abuse treatment intermittently beginning 31 October 2005, until her separation. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions while on active service. The applicant was diagnosed and treated for substance use disorders and mental health symptoms including depression broadly. The applicant was followed by both mental health and substance abuse treatment intermittently beginning 31 October 2005, until her separation. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review.

c. Does the condition experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant was identified, diagnosed with, and treated for

substance use disorders and mental health conditions that occurred during military service. The course and full nature of the applicant's mental health and substance use treatment was unavailable for review. However, the applicant did engage in avoidant and erratic behavior during active service such as utilizing illicit drugs on a number of occasions. These behaviors can be a natural sequela to some mental health conditions, including depression and anxiety. As a result, there is sufficient evidence for consideration for mitigation per the Liberal Consideration Policy.

3. The Board determined the supporting documents and evidence of record did not warrant a change in the applicant's characterization of service from UOTHC to honorable.

**BOARD VOTE:**

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |  |
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| : | : | : | DENY APPLICATION |
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BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant 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 DD Form 214 for the period 29 June 2004 to 10 July 2007 to show under honorable conditions (general).
2. The Board determined the evidence presented was insufficient to warrant relief to change her characterization of service to honorable.

**X //SIGNED//**

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.
4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

5. 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.

//NOTHING FOLLOWS//