

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006629

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded, and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- the narrative reason for separation as medical, disability
- his current social security number (SSN) as [REDACTED] and address
- additionally, he requests an appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 while at Fort Campbell, KY he was sexually assaulted by Staff Sergeant (SSG) PF\_\_, his platoon sergeant. It caused him post-traumatic stress disorder (PTSD), depression, and substance abuse. He has spent 32 years in a California prison due to these issues. He has felt embarrassment to talk about the military sexual assault (MST). He is in prison at 60 years old. He has finally been able to come to terms with what happened to him at 17 or 18 years old. He does not have other documents.

3. The applicant enlisted in the Regular Army on 12 February 1981 for three years. His military occupational specialty was 05C (Radio Teletype Operator). The DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the U.S.), dated 2 February 1981, shows his SSN as [REDACTED].

4. A review of the available record shows the applicant was identified throughout his period of active military service by the SSN [REDACTED].

5. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 12 May 1981 for failing to obey a lawful order on or about 8 March 1981. His punishment consisted of forfeiture of \$25.00 pay for one month, restriction, and extra duty.
6. The applicant was counseled on various occasions between 9 August 1981 and 21 June 1982 for: failure to repair, disregard for authority positions, suspension of check casing privileges, dishonored checks, insufficient funds, missing formation, sleeping on duty, verbal abuse, and missed dental appointment.
7. A Report of Mental Status Evaluation, dated 15 September 1981, shows the applicant had the mental capacity to understand and participate in board proceedings, was mentally responsible, met retention standards. He was cleared for any administrative action deemed appropriate by command.
8. The applicant's vehicle registration was terminated on 8 September 1982 as a result of the vehicle being used to transport contraband on the installation. The applicant's driving privileges were revoked.
9. The applicant's immediate commander notified him on 29 September 1982 of his intent to recommend for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsuitability. His recommendation was based on the applicant's inconsistency in maintaining the conduct becoming of a Soldier. He had been involved in more than an occasional conflict and had allowed his emotions and off duty habits to impair his duty performance. Rehabilitation efforts were met with negative results. He was advised of the rights available to him. The applicant acknowledged receipt on the same date.
10. The applicant consulted with legal counsel and was advised of the basis for the contemplated action to separate him. He waived his right to consideration of his case by a board of officers, personal appearance before a board of officers, and to submit statements in his own behalf. He understood that he may expect to encounter substantial prejudice in civilian life if a under honorable conditions, general discharge was issued to him.
11. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, paragraph 13-4c, for unsuitability, prior to his expiration term of service.
12. The separation authority approved the recommended separation on 4 October 1982, under the provisions of AR 635-200 paragraph 13-4c for unsuitability. He directed that the applicant be furnished a General Discharge Certificate.

13. The applicant was released from active duty on 15 October 1982 and transferred to the U.S. Army Control Group (USAR). His DD Form 214 shows his SSN as [REDACTED] [REDACTED]. He was discharged under the provisions of AR 635-200, paragraph 13-4c(1), for unsuitability-apathy, defective attitude, or inability to expend effort constructively. He was assigned Separation Code LMJ with Reenlistment Code 3 and 3C. His service was characterized as under honorable conditions (general). He completed 1 year, 8 months, and 4 days of net active service. His awards include the Army Service Ribbon and Expert Qualification Badge (M-16).

14. Regulatory guidance provides for separation due to unsuitability under the provisions of this chapter for inaptitude. Applicable to persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or ability to learn, personality disorder and apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.

15. AR 635-5 (Separation 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.

16. Orders D-02-012503, dated 11 February 1987, issued by the USAR, St. Louis, MO discharged the applicant from the Ready Reserve with a under honorable conditions, general discharge. Effective date 11 February 1987.

17. On 21 July 2023, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports regarding Sexual Assault records pertaining to the applicant.

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his honorable conditions (general) discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 12 February 1981.
- Applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 12 May 1981 for failing to obey a lawful order on or about 8 March 1981.
- Applicant was counseled on various occasions between 9 August 1981 and 21 June 1982 for: failure to repair, disregard for authority positions, suspension of check cashing privileges, dishonored checks, insufficient funds, missing formation, sleeping on duty, verbal abuse, and missed dental appointment.
- Applicant's vehicle registration was terminated on 8 September 1982 as a result of the vehicle being used to transport contraband on the installation. The applicant's driving privileges were revoked.
- Applicant's immediate commander notified him on 29 September 1982 of his intent to recommend separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsuitability. His recommendation was based on the applicant's inconsistency in maintaining conduct becoming of a soldier. He had been involved in more than an occasional conflict and had allowed his emotions and off duty habits to impair his duty performance.
- Applicant was discharged from active duty on 15 October 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-4c(1), for unsuitability-apathy, defective attitude, or inability to expend effort constructively. He was assigned Separation Code LMJ with Reenlistment Code 3 and 3C. His service was characterized as under honorable conditions (general).

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states while at Fort Campbell, KY he was sexually assaulted by his platoon sergeant. It caused him post-traumatic stress disorder (PTSD), depression, and substance abuse. He has spent 32 years in a California prison due to these issues. He has felt embarrassment to talk about the military sexual assault (MST). He is in prison at 60 years old. He has finally been able to come to terms with what happened to him at 17 or 18 years old. He does not have other documents.

e. Due to the period of service no active-duty electronic medical records were available for review. The applicant is not service connected and there are no VA electronic medical records available for review. However, the applicant submitted medical documentation from his time in service. His medical documentation is indicative

of clinical markers of MST, including a medical note dated 12 November 1981 indicating treatment for a sexually transmitted disease, frequent visits to medical, and a medical note dated 12 March 1982 indicating he was presenting with pain in his hip and testicle. A Mental Status Evaluation, dated 15 September 1981, shows the applicant had the mental capacity to understand and participate in board proceedings, was mentally responsible, met retention standards. He was cleared for any administrative action deemed appropriate by command. However, a medical examination dated 21 September 1982 shows the applicant noted concerns with depression and excessive worry.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is potential medical documentation of an experience during military service that mitigates his discharge. In addition, per Liberal Consideration, the applicant's assertion of MST is sufficient for the board's consideration.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends MST mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserted MST during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is no medical documentation of the applicant having been diagnosed with a BH condition while in military service. However, the applicant provides his medical record during his time in service evidencing frequent visits to medical clinic, sexually transmitted disease, and treatment for physical injuries around the time of the claimed trauma but not reported as a result of the trauma. The applicant's service record further evidences markers consistent with his assertion of MST including: issues with performance, disregard for military authority, and unexplained economic and behavioral changes. Despite the lack of medical documentation to substantiate the applicant self-asserted PTSD and depression due to MST, per Liberal Consideration, the applicant's self-assertion of MST is sufficient to warrant consideration. Given the nexus between MST and avoidance as well as difficulty with authority, the applicant's unsuitability-apathy, defective attitude, and/or inability to expend effort constructively, which resulted in his discharge, is mitigated by his reported experience of MST.

#### BOARD DISCUSSION:

1. 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. One possible outcome was to deny the request. However, the Board noted that although the applicant's period of service predates electronic medical records, his application included medical documentation from his time in service sufficient for review and consideration of the request. Documentation provided by the applicant and that in his service record revealed sufficient evidence to support the applicant's assertion of MST. In accordance with the liberal consideration memorandum, the applicant's contention of MST alone is sufficient alone for considered by the Board.

3. The Board further determined the evidence present insufficient to warrant a recommendation for that portion of the request regarding a correction to his SSN. Although the applicant provided a Social Security Number, in the absence of documentation verifying the number provided reflects the number on his supporting SSN card, the Board denied that portion of the request.



REFERENCES:

1. Title 10, USC, 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, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 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.

4. AR 635-200 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 13 provides that action will be taken to separate a member for unsuitability when it is clearly established that (1) In the judgment of his commander, he will not develop sufficiently to participate satisfactorily in further military training and/or become a satisfactory soldier, and (2) He meets retention medical standards. A member is subject to separation for unsuitability under the provisions of this chapter when one or more of the following conditions exist-inaptitude, applicable to persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or ability to learn; personality disorder; apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. Service was characterized as honorable or under honorable conditions.

5. AR 635-5 (Separation 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.

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

b. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

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 Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including 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 to those conditions or experiences.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Willkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//