

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230009453

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 1 April 1988
- letter, Department of Veterans Affairs (VA), dated 13 June 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR2000042519 on 14 November 2000 and AR20150015748 on 12 January 2017.

2. As a new argument, the applicant states, in effect, he was sexually assaulted by a white female Soldier at Fort Campbell, KY, which caused him severe mental health issues. He was subjected to racial harassment by his platoon sergeant. The platoon sergeant hit him in the face with his "KKK" ring on, which led to his discharge. The applicant notes post-traumatic stress disorder (PTSD) and sexual assault/harassment as issues related to his request.

3. The applicant enlisted in the Regular Army on 4 April 1978, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). He subsequently reenlisted on 27 January 1981 and 6 January 1984. The highest rank he attained was staff sergeant/E-6.

4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 26 August 1987, for willfully damaging

military property, on or about 17 May 1987. His punishment consisted of forfeiture of \$295.00 pay and 14 days of extra duty and restriction.

5. His immediate commander initiated a Bar to Reenlistment on 17 September 1987. As reasons for the proposed action, the commander noted the aforementioned Article 15, two incidents of dishonored checks, and pending charges for driving under the influence. The bar was approved on 6 November 1987.

6. The applicant received an administrative reprimand from the Commanding General (CG), Headquarters, U.S. Army Armor Center, Fort Knox, KY, on 18 September 1987, for being in physical control of a motor vehicle with a blood alcohol content of .31 percent (%). The CG informed him the reprimand was an administrative action and not punishment under the Uniform Code of Military Justice. Any matters submitted in rebuttal would be considered prior to the CG making his final decision regarding the filing of the reprimand in the applicant's Official Military Personnel File (OMPF). The applicant acknowledged receipt and elected not to make a statement in his own behalf. On 30 December 1987, the CG directed the reprimand be filed in the applicant's OMPF.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ, on 21 December 1987, for failure to go at the time prescribed to his appointed place of duty, on or about 4 December 1987, for signing an official request with the intent to deceive, on or about 7 December 1987, and for disobeying a lawful order from his first sergeant, on or about 11 December 1987. His punishment consisted of reduction to sergeant/E-5, forfeiture of \$599.00 pay, and 60 days of restriction. The applicant's appeal of his punishment was denied on 4 January 1988.

8. Two DA Forms 4187 (Personnel Action), show the applicant was reported absent without leave (AWOL) on 29 January 1988. He was apprehended and returned to duty on 2 February 1988.

9. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ, on 9 February 1988, for being AWOL, on or about 29 January 1988 until on or about 2 February 1988, and for breaking restriction, on or about 29 January 1988. His punishment consisted of reduction to specialist/E-4, forfeiture of \$519.00 pay per month for two months, and 45 days of extra duty and restriction. His appeal of his punishment was denied on 26 February 1988.

10. Court-martial charges were preferred against the applicant for a violation of the UCMJ, on 22 February 1988. The relevant DD Form 458 (Charge Sheet) shows he was charged with committing an assault upon Private First Class (PFC) [REDACTED] by striking him in the chest with a means likely to produce death or grievous bodily harm, to wit: an adjustable wrench, communicating a threat to injure Private [REDACTED] by cutting him with a

razor blade, and causing a breach of the peace by grabbing PFC [REDACTED] by the arm and using provoking language, on or about 18 February 1988.

11. The applicant consulted with legal counsel.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested a discharge for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

12. In a memorandum, dated 21 March 1988, the applicant requested reconsideration of his request for a discharge for the good of the service. He stated, in effect:

a. Over the last 10 and a half years, he worked hard to serve his country. Despite a mostly commendable record, he made some mistakes. His problems all had one common source, alcohol. He realized the degree which alcohol had taken over his life. It hurt him to put his career in jeopardy because of his involvement with alcohol.

b. The statements in regard to the current charges against him were exaggerated or inaccurate. He wanted to clarify that the wrench involved was only a small crescent wrench, approximately six to eight inches in length. It was never used in a way that could cause harm. The razor was one that is used for scraping paint. He did not remember the exact words used during the altercation, but he did not threaten anyone with a one inch paint-scraping razor.

c. To date, he had spent a month in confinement due to the charges. After reflecting, he was extremely sorry. He had a wife and son to support. He wished he would have recognized his problem with alcohol soon enough to save his career. His 30 days in confinement and unfavorable discharge characterization would serve as notice

to others that the disciplinary needs of the Army were met. A discharge for the good of the service would allow him to start fresh.

13. On 29 March 1988, the applicant's chain of command recommended approval of his request for a discharge for the good of the service, further recommending a UOTHC discharge.

14. On that same date, the separation authority approved the applicant's requested discharge in lieu of court-martial and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

15. The applicant was discharged on 1 April 1988, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reenlistment code RE-3, 3B, 3C. He was credited with 9 years, 11 months, and 25 days of net active service, with lost time from 29 January 1988 to 1 February 1988. He was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal (3rd award)
- Driver and Mechanics Badge
- Noncommissioned Officer Professional Development Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

16. The Army Discharge Review Board (ADRB) reviewed the applicant's discharge on or about 4 December 1996. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

17. The ABCMR reviewed the applicant's request for discharge upgrade on 14 November 2000. After reviewing the evidence, allegations, and information provided by the applicant, the Board determined the type of discharge directed was appropriate. The Board denied his request for relief.

18. The ABCMR reconsidered the applicant's request for a discharge upgrade on 12 January 2017. Due to the applicant's contention of PTSD, related to terrorist attacks while he was in Germany, an advisory opinion was obtained from the medical staff of the Army Review Boards Agency (ARBA). The advisory official concluded there was insufficient evidence to support the claim that PTSD was the cause of the misconduct leading to his UOTHC discharge. The Board determined the applicant's period of service under review did not meet the standards of acceptable conduct to merit a discharge upgrade. His request for relief was denied.

19. The applicant provides a benefits summary letter from the VA, dated 13 June 2023, which shows he has a combined service-connected disability rating of 100%.

20. On 28 September 2023, in the processing of this case, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative, Military Police Reports and/or Sexual Assault records pertaining to the applicant.

21. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

22. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced military sexual trauma (MST) and resultant PTSD that mitigates his misconduct.

2. 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 4 April 1978; 2) The applicant accepted nonjudicial punishment (NJP) on 26 August 1987 for willfully damaging military property; 3) His immediate commander initiated a Bar to Reenlistment on 17 September 1987 due to the previous mentioned NJP, two incidents of dishonored checks, and pending charges for driving under the influence; 4) The applicant accepted NJP on 21 December 1987 for failure to go at the time prescribed to his appointed place of duty, for signing an official request with the intent to deceive, and for disobeying a lawful order from his first sergeant; 5) The applicant accepted NJP on 9 February 1988 for being AWOL from 29 January-2 February 1988 and for breaking restriction; 6) Court-martial charges were preferred against the applicant for a violation of the UCMJ, on 22 February 1988. The applicant was charged with committing an assault upon Private First Class (PFC) [REDACTED] by striking him in the chest with a means likely to produce death or grievous bodily harm, to wit: an adjustable wrench, communicating a threat to injure Private [REDACTED] by cutting him with a razor blade, and causing a breach of the peace by grabbing PFC [REDACTED] by the arm and using provoking language, on or about 18 February 1988; 7) The applicant was discharged on 1 April 1988, Chapter 10, for the good of the service - in lieu of trial by court-martial. His character of service was UOTHC.

3. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional hardcopy medical documentation was provided.

4. On his application, the applicant noted MST and resultant PTSD are related to his request as contributing and mitigating factors in the circumstances that resulted in his separation. He also discussed experiencing racial discrimination. There is insufficient evidence the applicant reported any mental health symptoms, MST, or racial discrimination while on active service. He did mention having difficulty with alcohol abuse to his command prior to his discharge. A review of JLV provided evidence the applicant has engaged with the VA for care for repeated homelessness, extensive poly-substance abuse/dependence, depression and anxiety related to events since his discharge, and PTSD as a result of his childhood experiences. There was insufficient the applicant has reported or been diagnosed with PTSD related to his active service or MST. The applicant has been assessed and diagnosed with service-connected conditions. However, he has not been diagnosed with a service-connected mental health condition including PTSD or a condition related to MST.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that partially mitigates his misconduct. The applicant does contend he was experienced MST that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

6. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing MST and PTSD. The applicant has been diagnosed with PTSD by the VA but it was attributed to childhood and post discharge experiences. The applicant has not been diagnosed with service-connected PTSD or a mental health condition related to MST. Also, the applicant reported experiencing racial discrimination.

b. Did the condition exist, or experience occur during military service? Yes, the applicant contends he was experiencing MST and resultant PTSD, as well as racial discrimination, while on active service.

c. Does the condition experience actually excuse or mitigate the discharge? Partially, there is insufficient evidence the applicant has been diagnosed with service-connected PTSD or reported MST during his active service or to the VA. However, the

applicant's report of MST alone, per Liberal Consideration, is sufficient for the board's consideration. Some of the applicant's misconduct can be natural sequelae to racial discrimination, MST and resultant PTSD, such as disobeying a lawful order, driving under the influence, going AWOL, and failing to be at his appointed place of duty. MST and PTSD can be associated with avoidant and erratic behaviors similar to these types of misconduct. However, there is no nexus between racial discrimination, MST and PTSD and the violent assaults, threats of violence, damaging military property, writing bad checks and signing an official request with the intent to deceive: 1) these types of misconduct are not part of the natural history or sequelae of racial discrimination, MST and PTSD; 2) Racial discrimination, MST and PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he experienced MST, racial discrimination, and PTSD that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. He provides minimal evidence, other than self-report, of MST, and his PTSD was determined to have been caused by childhood traumas; his PTSD was not service related. Further, the evidence of record shows the offenses leading to his discharge were of a violent nature.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board concurs with the corrections addressed in Administrative Note(s) below, but found the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend decision of the ABCMR set forth in Docket Number ABCMR) in Docket Numbers AR2000042519, dated 14 November 2000 and AR20150015748, dated 12 January 2017.

6/6/2024



 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.

ADMINISTRATIVE NOTE(S): A review of the applicant's record shows his DD Form 214, for the period ending 1 April 1988, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19780404 UNTIL 19840105

REFERENCES:

1. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. 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 regulation provides the ABCMR may, in its discretion, hold a hearing. 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. AR 635-5 (Personnel Separations) did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

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 Discharge Review Boards (DRB) and 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or 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.

6. 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//