

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011663

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Memorandum of Appreciation, 9 March 1989
- Letter of Appreciation, 14 March 1989
- DA Form 638 (Recommendation for Award), 11 May 1989
- Letter of Commendation, 15 June 1989
- Two Letters of Recommendation
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Benefits Letter, 10 June 2019

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 he was being sexually harassed by his squad leader and if he did not participate in the sexual acts, he would counsel him and/or give him extra duty. He believes he was discharged based on false accusations and he deserves an honorable discharge. The applicant also marked post-traumatic stress disorder (PTSD) and sexual assault/harassment on his DD Form 293 as conditions related to his request.
3. The applicant provides:
 - a. A Memorandum of Appreciation, dated 9 March 1989, for the applicant's outstanding performance in support of the 354th Medical Group, Myrtle Beach Air Force Base, third annual joint training endeavor.

b. A Letter of Appreciation, dated 14 March 1989, for his untiring and expert efforts in support of the 354th Medical Group, Myrtle Beach Air Force Base, third annual joint training endeavor.

c. A DA Form 638, dated 11 May 1989, requesting the applicant receive a Certificate of Achievement for his outstanding performance during the Joint Readiness Training Center (JRTC).

d. A Letter of Commendation, dated 15 June 1989, for successful completion of the 1989 Physiologic Assessment Program and outstanding performance as a member of the assessment team.

e. Two letters of recommendation to retain the applicant, dated 24 August 1989, outlined details of the applicant's outstanding performance as a driver for the aid and evacuation team during JRTC.

- Staff Sergeant HEW, Medical Platoon Sergeant
- Sergeant TMM, Medical Noncommissioned Officer (NCO)

f. A very dark copy of an illegible letter.

g. A benefits letter from the VA, dated 10 June 2019, shows the applicant's evaluation of PTSD at 100% was continued.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 31 March 1987.

b. A DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows he accepted nonjudicial punishment on 9 May 1989 for one specification of failure to be at his appointed place of duty. His punishment included reduction to private/E-2.

c. A second DA Form 2627 shows the applicant accepted nonjudicial punishment on 21 July 1989 for one specification of failure to obey a lawful order from a senior noncommissioned officer. His punishment included reduction to private/E-1.

d. A DA Form 3822-R (Report of Mental Status Evaluation), dated 1 August 1989, shows the applicant was evaluated during his hospitalization on Inpatient Psychiatry from 18 July 1989 through 1 August 1989, and was diagnosed with adjustment disorder. The physician further noted in the remarks, the applicant's premorbid personality appears to have been relatively well adjusted; however, he had become so demoralized and alienated from the Army that significant on-going emotional turmoil could be

anticipated and any efforts at rehabilitation would be futile. He recommended the applicant be separated from the service under Chapter 13 since he met medical retention standards and his ability to perform duties effectively in the future, and his potential for advancement or leadership, was unlikely.

e. A DA Form 3822-R dated 6 August 1989, confirmed the applicant was experiencing an adjustment disorder reference the changes in his life after joining the military. The physician further noted while there was no personality disorder or suicidal/homicidal ideations evident at the time, it was strongly recommended that the command consider an administrative separation. The applicant was not likely to benefit from further treatment, disciplinary action, rehabilitative transfer or retraining. He could also benefit from a visit to the Inspector General, as he appeared to be convinced, he had been treated unfairly. He was psychiatrically cleared for any administrative action by the command.

f. On 21 August 1989, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for a pattern of misconduct. The reasons for the commander's proposed action were the applicant's conduct was prejudicial to good order and discipline to include two Article 15's for failure to repair and willfully disobeying a direct order from the first sergeant. The applicant acknowledged receipt of the notification of separation action on the same day.

g. On 21 August 1989, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment for a period of 2 years after discharge
- he elected to submit matters on his own behalf
- counsel further requested termination of separation action and the applicant be given a rehabilitative transfer

h. The applicant's personal statement, dated 25 August 1989 wherein he requested a rehabilitative transfer citing prejudicial actions and feelings demonstrated by his squad leader that prevented him from performing to his maximum potential. The applicant further noted he had raised it to the attention of the chain of command and was denied a rehabilitative transfer which only intensified the situation at the company.

i. The immediate commander initiated separation action against the applicant for patterns of misconduct and emphasized the applicant's past history showed after ample

opportunity, he refused to improve. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

j. On 8 September 1989, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12b for a pattern of misconduct. He would be issued a general, under honorable conditions discharge.

k. On 5 October 1989, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 6 months, and 5 days of active service. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct - Pattern of Misconduct," with a reentry code of 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Parachutist Badge
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Field Medical Badge

5. On 25 January 2024, the Department of the Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding sexual assault and no records were found.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he experienced military sexual trauma (MST) and resultant PTSD that mitigates his misconduct.

b. 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 31 March 1987; 2) The applicant accepted nonjudicial punishment (NJP) twice between May and July 1989 for failure to be at place of duty and failure to obey an order; 3) The applicant was discharged on 5 October 1989, Chapter 14-12b, Misconduct - Pattern of Misconduct. His character of service was general, under honorable conditions.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. On his application, the applicant noted MST and resultant PTSD were related to his request as contributing and mitigating factors in the circumstances that resulted in his separation. There was evidence the applicant was experiencing mental health symptoms while on active service. He had two Mental Status Evaluations completed in August 1989 during an inpatient psychiatric hospitalization. He was diagnosed with an adjustment disorder, and he was recommended for an administrative separation. A review of JLV provided evidence the applicant has engaged with the VA for care for homelessness, depression, paranoid personality disorder, and PTSD. In addition, his diagnosis of PTSD has been determined to be service-connected and related to MST.

e. 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 mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced MST and PTSD while on active service. The applicant was diagnosed with an adjustment disorder while on active service, and he later has been diagnosed with PTSD related to MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced MST and resultant PTSD, while on active service. The applicant was diagnosed with an adjustment disorder while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence the applicant was experiencing mental health symptoms while on active service, and he was diagnosed with an adjustment disorder and engaged in some behavioral healthcare. After his discharge, he was diagnosed with service-connected PTSD as a result of MST. Therefore, there is sufficient evidence the applicant's misconduct is mitigatable in accordance with Liberal Consideration. In

addition, it is recommended the narrative reason for his separation be amended to Secretarial Authority.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the medical advisor's review, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for patterns of misconduct with the commander citing the applicant's conduct being prejudicial to good order and discipline to include two records of nonjudicial punishment. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed the medical advisor's review finding there to be sufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. However, the Board disagreed noting the applicant had more than 30 negative counseling statements and the behavior was continuous. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met, the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.
4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions

or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on equity, injustice, or clemency grounds, BCM/NRs 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//