

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230011683

APPLICANT REQUESTS:

- reconsideration of his previously upgraded discharge from under honorable conditions (General) to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military or Naval Record), 22 February 1978
- Self-Authored Statements (three)
- Request for Chapter 10 Discharge, 26 May 1970
- Medical documentation 27 May 1970, 16 September 2014, and 27 June 2018
- Reissued DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 June 1970
- Army Discharge Review Board (ADRB) documents

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:

- AC95-0742727 on 9 August 1995
- AR20000037480 on 31 August 2000
- AR20180007356 on 14 October 2020
- AR20210012148 on 17 November 2021

2. The applicant provides three letters to the Board requesting reconsideration of his partial grant. He states, in effect:

a. He was previously denied discharge upgrades and believes he should receive compensation for his pain and suffering, referring to his original request to the ADRB. He references his arrest and court martial, stating he did not attend the court martial,

and the Staff Judge Advocate, who he says perjured himself at the court martial, that he, the applicant, did not want to delay the court martial to resign from the Army. After his first sergeant assaulted him with a baseball bat, he was offered a series of Article 15's to persuade him from pursuing assault charges against his first sergeant. He believes the Army was going to get rid of him either by death or resignation, and references being held in the stockade with several emergency incidents arising.

b. He was abused physically and sexually, which included being kicked with combat boots, beaten with batons, and sexually molested with a baton, he resigned to save his life and prevent further pain and injuries, both physical and mental. He has been withheld pertinent information which he could have used to make a valid Department of Veterans Affairs (VA) claim. He has suffered loss and mental illness, which should have been treated. He believes the Army had a legal duty to disclose information, and by concealing his post-traumatic stress disorder (PTSD) and his sexual assault it has denied him from receiving VA benefits and care.

c. He would like to receive a medical discharge because he was severely harmed mentally and psychologically while serving. While in service he additionally was suffering from prodromal schizoaffective disorder, which is a serious illness that led to the misconduct and ultimately his separation from the Army.

d. He has suffered more than 50 years with loss of economic and wellness issues. If he had a psychiatrist to oversee his discharge, he would not have suffered this life of agony, pain, and disabilities. He believes the Board determined he suffered from a mental condition; however, failed to include compensation or pension payments in their decision.

3. The applicant enlisted in the Regular Army, with parental or legal guardian consent on 29 November 1968.

4. He accepted nonjudicial punishments (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for the following:

a. On 11 March 1969, for wrongfully engaging in a fist fight with another Soldier on or about 10 March 1969. His punishment imposed was forfeiture of \$51.00 per month for one month, restriction, and extra duty for 20 days.

b. On 14 April 1969, for unlawfully striking another Soldier in the face with his fist on or about 29 March 1969 and unlawfully striking another Soldier on the back of the neck with a rifle stock and on the chest with a tent stake on or about 12 April 1969. His punishment imposed was reduction to the grade of E-1 and forfeiture of \$51.00 per month for two months.

c. On 5 November 1969, for behaving himself disrespectfully toward his superior commissioned officer on or about 4 November 1969. His punishment imposed was forfeiture of an illegible amount for one month, restriction, and extra duty for 14 days.

d. On 18 April 1970, for dereliction in the performance of his duties by sleeping at his post on or about 10 April 1970. His punishment is not shown.

e. On 19 April 1970, for willfully disobeying lawful orders given by his superior commissioned officer on or about 19 April 1970.

5. Court-martial charges were preferred against the applicant on 4 May 1970, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of dereliction in his performance of his duties, three specifications of willfully disobeying a lawful order/command from a commissioned officer, two specifications of willfully disobeying a lawful order from a noncommissioned officer, and one specification of failure to repair.

6. On 26 May 1970, the applicant consulted with legal counsel and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under conditions other than honorable, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

7. The applicant's immediate and intermediate commander's recommended approval of his request for separation and recommended he be furnished an undesirable discharge certificate.

8. The separation authority approved the applicant's request for discharge for the good of the service on 4 June 1970, additionally adding he would be issued a DD Form 258A (Undesirable Discharge Certificate).
9. On 29 June 1970, the applicant accepted NJP, under the provisions of Article 15, of the UCMJ, for assaulting another Soldier by striking him with a broom stick on or about 28 June 1970. His punishment imposed was forfeiture of \$50.00 pay for one month, restriction, and extra duty for 14 days.
10. The applicant was discharged on 29 June 1970, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 confirms his service was characterized as under conditions other than honorable, with separation program number 246 and reenlistment code RE-4. He was credited with 1 year, 6 months, and 21 days of active service.
11. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of his character of service, on or about 12 March 1980. After careful consideration, the Board determined the applicant was properly discharged and denied the request for a change in the type and nature of his discharge.
12. On 9 August 1995, his request for discharge upgrade was denied by the ABCMR, the Board found the applicant did not present and his records did not contain sufficient justification to grant the relief requested or to excuse the failure to file within the time prescribed by law.
13. On 31 August 2000, the ABCMR found the evidence presented did not demonstrate the existence of a probable error or injustice and the Board determined the overall merits of the case were insufficient as a basis for correction to the records of the applicant.
14. On 17 November 2021, the ABCMR denied the applicant's request for upgrade of his discharge; however, the Deputy Assistant Secretary of the Army reviewed the evidence presented, findings, conclusion, and the Board member recommendations, and found there was sufficient evidence to grant partial relief of the applicant's request. He directed the applicant's characterization of service be upgraded to show his service was characterized as Under Honorable Conditions (General). The applicant was reissued a new DD Form 214 on 4 August 2022.
15. The applicant provides numerous statements and documents in support of his request. Additionally, he provides an in-service medical document, which states he was kicked in the side, back, and chest, while in the stockade. It is noted that he suffered from anxiety and adjustment problems in the unit. These documents are available in entirety for review within the supporting documents.

16. 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 under other than honorable conditions characterization of service is normally considered appropriate.

17. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

18. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting reconsideration of their upgrade of his under honorable conditions (general) granted by the DASA (RB) on 24 May 2022 (AR20210012148). In his lengthy request for reconsideration, he states:

“The applicant was forced to resign under duress, and physical, mental, and sexual assault by the M.P.s at the solitary confinement at the stockade.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His reissued DD 214 for the period of Service under consideration shows he entered the regular Army on 29 November 1968 and was discharged on 29 June 1970 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. His separation program number of 246 denotes “Discharge for the good of the service.”

d. As noted above, the applicant was granted a discharge upgrade in May 2022. Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. Other than the applicant's self-authored letter, no new evidence was submitted with this application.

f. JLV contains no diagnoses on his medical problem list and contains no clinical encounters.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he was sexually assaulted with in military confinement.

(2) Did the condition exist or experience occur during military service? Applicant asserts he was sexually assaulted with in military confinement.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There was no probative evidence submitted, found in the EMR or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As there is an association between MST with avoidant behaviors and resistance to authority, it mitigated his period of AWOL and Article 15 for disrespecting a noncommissioned officer. However, it does not affect one's ability to differentiate right from wrong and adhere to the right and so it cannot mitigate his two Article 15's for assault and battery.

BOARD DISCUSSION:

1. 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 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 charged with dereliction, disobeying a lawful command, and failing to report to his place of duty, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board noted the applicant's contention of military sexual trauma and the medical reviewer's opinion finding no diagnoses on his medical problem list or clinical encounters.

2. 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:

<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 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 amendment of the ABCMR decision rendered in Docket Number AC95-0742727 on 9 August 1995, AR20000037480 on 31 August 2000, AR20180007356 on 14 October 2020, and AR20210012148 on 17 November 2021.

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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. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. 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. 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. 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.

3. 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.

4. 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, 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.

//NOTHING FOLLOWS//