

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 251 June 2024

DOCKET NUMBER: AR20230011694

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:
 - item 4a (Grade, Rate or Rank): sergeant (SGT)
 - item 4b (Pay Grade): E-5
 - item 11 (Primary Specialty Number, Title and Years and Months in Specialty): 64C (Motor Transport Operator)
 - item 12c (Net Active Service This Period): 2 years and 1 month
 - item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Certificate of Achievement
 - item 14 (Military Education): Pershing Missile Crewman Course and Installation Driver Safety Course

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

- DD Form 149 (Application for Correction of Military Record)
- Three Certificates of Training
- Letter to Applicant from Commanding General Fort Sill
- Excerpt of DA Form 2-1 (Personnel Qualification Record – Part II)
- DD Form 214, for the period ending 6 September 1985
- Two Photographs
- U.S. Armed Forces Veteran Identification Card
- Letter to Applicant from President
- Ontario Secondary School Diploma
- Eleven Post-Service Training Certificates
- Letter to Applicant from Hospice Care
- Death Certificate, Applicant's Spouse
- Department of Veteran's Affairs (VA) Records
- Ten Letters of Support

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 the victim of military sexual trauma (MST) and assault, which included him being shot on base by his MST assailants. The situation was covered up under a confidential agreement of intimidation. The VA issued a letter stating he has an honorable discharge for VA purposes and granted him a 10% disability evaluation. He is currently a homeless Veteran with multiple tumors. He annotates post-traumatic stress disorder (PTSD), sexual assault/harassment, and reprisal/whistleblower as issues/conditions related to his request.
3. The applicant enlisted in the Regular Army on 3 December 1983. The highest grade he held was private first class (PFC)/E-3.
4. He completed training with the award of the military occupational specialty 15B (Pershing Missile Crewman) with additional training as a driver.
5. The applicant received a Certificate of Achievement for participating with the 214th Field Artillery Brigade boxing team in 1984.
6. The Commanding General Fort Sill by letter to the applicant notified him that his authorized leave was terminated and he was considered absent without leave (AWOL). He was ordered to return to the post immediately. The reasons for the actions were that he had made claims of mistreatment and having been assaulted that were found to be baseless and that he had been shot during a training accident due to his own negligence. Junior officers had also reported that his sexual preferences had led to a hostile environment.
7. Court-martial charges were preferred against the applicant on 15 July 1985 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 1 February 1985 until on or about 15 July 1985.
8. The applicant consulted with legal counsel on 17 July 1985 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting 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 further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He was advised he could submit any statements he desired in his own behalf; however, the applicant waived this right and his right to have a separation physical.

9. On 29 July 1985, the applicant's immediate commander recommended approval of the applicant's request for discharge in lieu of trial by court-martial, and that he receive an other than honorable conditions discharge.

10. The separation authority approved the applicant's request for discharge on 16 August 1985, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that the applicant be reduced to the lowest enlisted grade and receive a under other than honorable conditions discharge.

11. The applicant's DA Form 2-1 shows his duty MOS as 15E with a principal duty of light truck driver.

12. The applicant was discharged on 9 September 1985. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial and his service was characterized as under other than honorable conditions. The DD Form 214 also shows:

- item 4a (Grade, Rate or Rank): private
- item 4b (Pay Grade): E-1
- item 11 (Primary Specialty Number, Title and Years and Months in Specialty): 15E (Pershing Missile Crewmember)
- item 12c (Net Active Service This Period): 1 year, 4 months, and 20 days
- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Hand Grenade Bar
- item 14 (Military Education): None
- item 18 (Remarks): excess leave: 50 days, 17 July 1985 – 6 September 1985

- item 29 (Dates of Time Lost During This Period): 1 February 1985 – 14 July 1985

13. There is no evidence he was awarded the MOS 64C (Motor Transport Operator).

14. The applicant provides:

a. An Ontario Secondary School diploma dated 29 January 1991.

b. Training certificates for:

- Dairy Equipment installer and maintenance man (17 June 1988)
- Health Care Aide Program (1990)
- Transcript Nursing Assistant training transcript (1991)
- Server Intervention Certificate (1991)
- Fire Safety Certificate (1992)
- OSHA-Blood Born Pathogens Requirements (1992)
- Precaution for Infection Control (1992)
- Body Mechanics (1992)
- Commercial Truck Driver transcript (2006)
- Defensive Driving Course (2006)
- Defensive Driving Course (2009)
- Lead Driver Course (2015)

c. His wife's death certificate (2012) with a letter indicating her period in hospice care.

d. VA documents showing his application for benefits with award of a 10% disability evaluation for tinnitus and bilateral hearing loss and determination his service was honorable for VA purposes.

e. VA medical treatment for Adjustment Disorder with mixed anxiety and depressed mood, MST/PTSD, insomnia, rectal bleeding, and high blood pressure.

f. A VA identification card.

g. Ten third party letters of support dating between 1990 and 2023. The personnel submitting the letters indicate they found the applicant to be kind, patient, sincere, intelligent, articulate punctual, and dependable.

15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200,

Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. In determining whether to grant relief the Boards for Correction of Military/Naval Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge (UOTHC). He contends he experienced reprisal, 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 Regular Army on 3 December 1983; 2) Court-martial charges were preferred against the applicant on 15 July 1985 for being AWOL from 1 February-15 July 1985; 3) The applicant was discharged on 9 September 1985, Chapter 10- for the good of the service in lieu of trial by court-martial. His characterization of service was UOTHC.

c. 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.

d. On his application, the applicant noted reprisal, MST and resultant PTSD were related to his request as contributing and mitigating factors in the circumstances that resulted in his separation. There is evidence the applicant while on active service reported being injured as a result of a gunshot.

e. A review of JLV provided evidence the applicant has been engaged with treatment for PTSD related to MST since 2023. He has consistently reported being sexually assaulted and then later abused and shot by the same individuals in a later event. He reported alerting his Chaplain and leadership, but these reports were not addressed.

f. 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.

g. Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced reprisal, MST and resultant

PTSD while on active service. The applicant was diagnosed with PTSD related to MST by the VA in 2023.

(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 PTSD related to MST by the VA in 2023.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant experienced reprisal, MST and resultant PTSD while on active service. He has been diagnosed with PTSD due to his experience of MST, and he is actively in treatment in the VA system of care. The applicant did go AWOL, which is avoidant behavior. Avoidant behavior is a natural sequelae to PTSD. Therefore, there is sufficient evidence the applicant's misconduct is mitigatable in accordance with Liberal Consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge upgrade: Grant to General. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that his service did not rise to the level required for an honorable characterization (given his AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

b. Grade/Rank: Deny. The Board noted that by regulation, when a soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per the regulation that governs enlisted promotions and reductions. The applicant held the rank of PFC/E-3 before he

was reduced to PVT/E-1; he did not hold the rank of SGT/E-5. There is no evidence that shows he was promoted to SGT/E-5.

c. Primary Specialty: Deny. There is no evidence the applicant completed formal training for MOS 64C. He provides a diploma reflective of his completion of an 8-hour driver safety course. However, that does not qualify him to be credited with completion of formal training in MOS 64C.

d. Net Service: Deny. The applicant served on active duty from 3 December 1983 to 6 September 1985, a period of 1 year, 9 months, and 2 days. However, he was AWOL/had lost time from 1 February to 15 July 1985 which is not creditable. After subtracting his lost time, his net service is 1 year, 4 months, and 20 days.

e. Awards: Deny. There is no provision in the governing regulation to list Certificates of Achievement on the DD Form 214.

e. Military Education: Deny. The applicant provides a diploma reflective of his completion of the Pershing Missile Crewman Course on 12 April 1984. In addition to the lack of duration of this training course, by regulation, combat courses are not listed. Additionally, the Driver Safety Course was an 8 hour course (less than 40 hours).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 6 September 1985, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.



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, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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. Army Regulation 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

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

5. Army Regulation 635-5 (Separation Documents) prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214. It provides the following at:

a. Block 12a (Date Entered Active Duty (AD) This Period) Enter the beginning date of the continuous period of AD for issuance of this DD Form 214, for which a DD Form 214 was not previously issued. (

b. Block 12b (Separation Date This Period) The soldier's transition date.

c. Block 12c (Net Active Service This Period). Amount of service this period, computed by subtracting item 12a from 12b. Lost time under 10 USC 972 and non-creditable time after ETS, if any, are deducted. Such time will be identified in block 18 (remarks) and/or block 29 (Dates of lost time during this period).

d. Block 13 (DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED), list awards and decorations for all periods of service in the priority sequence specified in AR 600-8-22. Each entry will be verified by the soldier's records. Do not use abbreviations.

e. Block 14 (MILITARY EDUCATION), from ERB/ORB, list formal in-service (full-time attendance) training courses successfully completed during the period of service covered by the DD Form 214. Include title, length in weeks, and year completed. This information is to assist the soldier in job placement and counseling; therefore, do not list training courses for combat skills.

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 (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 a 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. 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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//