

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230012618

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- restoration of his rank to specialist (SPC), E-4

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

- DD Form 149 (Application for Correction of Military Record)
- Healthcare Provider Letter
- Self-Authored Statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 is requesting an upgrade of his discharge and restoration of his rank to SPC, E-4. He experienced antisemitism several times during his military career, to include not being able to attend the field training exercise during basic training due to threats of violence against him, as explained to him by his commander. The racial epithets continued throughout his service because he was Jewish and there were not many. Even on the last day of his discharge he was told to report to Fort Sheridan to receive his discharge papers and it should only take 30 minutes to an hour. He arrived at 8:00 a.m. and was directed to take a seat. He waited patiently for hours and around 2-3 p.m. he finally walked up to the desk to inquire about his discharge papers. He was told to sit down again, and additional derogatory comments made about him that he could clearly hear. A senior officer was brought in and he was threatened with a dishonorable discharge. The applicant felt disrespected and just wanted to go home. He

signed some papers and received a general, under honorable conditions discharge. The applicant also marked "other mental health," as a condition related to his request.

3. The applicant provides, a note from his healthcare provided dated 26 June 2023, which states he is under the physician's care for treatment of depression. On numerous occasions he has spoken to him surrounding the circumstances that led to his discharge. The applicant expressed his belief of discrimination due to religious grounds and he felt a strong sense of injustice.

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

a. He enlisted into the Army of the U.S. on 6 April 1959.

b. His DA Form 24 (Service Record) shows:

- Religious Preference – Jewish
- Section IV (Chronological Record of Military Service) - the applicant had all excellent conduct and efficiency ratings until his reassignment to the U.S. Army Support Center in Chicago on approximately 15 April 1961

c. A memorandum dated 25 January 1962 shows disciplinary punishment was imposed due to the applicant's failure to obey a lawful order from Sergeant First Class (SFC) SK to obtain change for the store. He also treated SFC SK with contempt and disrespect by asking him "why don't you punch me," or words to that effect. He was notified the commander was considering punishment under Article 15.

d. The service record is void of a DA Form 2627 (Record of Proceedings Under Article 15, UCMJ); however, an endorsement signed by the applicant noted he accepted punishment under Article 15 and did not wish to submit any evidence in mitigation, extenuation, or defense.

e. On 29 January 1962, Colonel FEW, Commanding, reduced the applicant to the grade of private first class (PFC), E-3 and reprimanded him for disobeying a lawful order from a superior noncommissioned officer and treating him with contempt. The applicant acknowledged receipt on the same day.

f. On 14 November 1974, he was released from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 3 years and 27 days of active service with no lost time. Block 11c (Reason and Authority) shows he was released for expiration of term of service with separation number 201. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar

- Sharpshooter Marksmanship Qualification Badge with Carbine Bar
- Letter of Commendation

5. 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.

6. By regulation (AR 635-5), 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.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his general, under honorable conditions discharge and restoration of his rank to specialist (SPC), E-4. He contends OMH mitigates his discharge. This opine will narrowly focus on his upgrade request and will defer the applicant's request for restoration of his rank to the Board.

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:

- The applicant enlisted into the Army of the U.S. on 6 April 1959.
- The applicant had all excellent conduct and efficiency ratings until his reassignment to the U.S. Army Support Center in Chicago on approximately 15 April 1961.
- A memorandum dated 25 January 1962 shows disciplinary punishment was imposed due to the applicant's failure to obey a lawful order from Sergeant First Class (SFC) SK to obtain change for the store. He also treated SFC SK with contempt and disrespect by asking him "why don't you punch me," or words to that effect. He was notified the commander was considering punishment under Article 15.
- On 29 January 1962, Colonel FEW, Commanding, reduced the applicant to the grade of private first class (PFC), E-3 and reprimanded him for disobeying a lawful order from a superior noncommissioned officer and treating him with contempt. The applicant acknowledged receipt on the same day.
- On 2 May 1962, he was released from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 3 years and 27 days of active service with no lost time. Block 11c

(Reason and Authority) shows he was released for expiration of term of service with separation number 201.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "during my military tour, I experienced antisemitism numerous times. In Basic Training I was not allowed to attend BIVOUAC, because my company commander said there had been threats of violence towards me. I was also attacked by a group of people that held me down, with a military blanket and continuously beat on me. They poured something on my testicles that burned them terribly. During my 3+years, in the military, I cannot even tell you how many times I was referred to, in a derogatory way, with constant antisemitic names, such as: "Black Blooded Jew", a "Kike", "a Heeb", "Dirty Jew", "Christ Killer", and many names, that I can't recall." Due to the period of service, no active-duty electronic medical records were available for review.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic behavioral health medical records were available for review and the medical documentation post-military service he submitted only provides a brief letter from his healthcare provider dated 26 June 2023. The letter states the applicant "is under my care for treatment of depression. On multiple occasions he has talked about his military service and the circumstances surrounding his discharge. He has expressed his belief that he was discriminated on religious grounds and ever since has felt a sense of injustice." However, the letter does not indicate a clear diagnosis, dates of treatment, when the depressive symptoms started and whether there is a possibility the depression was present during the time of his military service.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant had an experience, MST along with a physical assault, during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts he was physically assaulted, and his genitals were chemically burned during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Given the nexus between MST and disregard for authority, the applicant's actions of

disobeying a lawful order from a superior noncommissioned officer and treating him with contempt, which was the basis for his adverse discharge, is mitigated by his experience of MST.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding sufficient evidence to support the applicant had an experience, MST along with a physical assault, during military service that mitigates his discharge. The opine noted the applicant'[s actions of disrespect for authority are mitigated based on the nexus between MST.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of disrespect. However, the Board determined there is insufficient evidence to support the applicant's contentions for restoration of his rank to specialist (SPC), E-4. The Board found the applicant was reduced in rank after receiving and Article 15. The Board agreed, upgrade of the applicant's discharge to honorable is warranted based on evidence in the record and the advising official opine. Based on this, the Board granted partial relief to upgrade the applicant's discharge.

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:

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 re-issuing the applicant's DD Form 214 for the period ending 14 November 1974, to show his characterization of service as honorable.

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 restoration of the applicant's rank to specialist (SPC), E-4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 635-5 (Separations Documents) in effect at the time, 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.

3. Army Regulation 635-200 (Personnel Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation from the Army with honor. The issuance of an honorable discharge is conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned. An honorable discharge will be furnished when the individual meets the following qualifications:

- Has conduct ratings of at least “good”
- Has efficiency ratings of at least “fair”
- Has not been convicted by a general court-martial
- Has not been convicted more than once by a special court-martial

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge. A general discharge may be issued if an individual has been convicted of an offense by general court-martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extensions thereof. The decision is discretionary and if there is evidence that the individual's military behavior has been proper over a reasonable period of time subsequent to the conviction(s), he may be considered for an honorable discharge.

4. 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.

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 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.

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 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.

7. Title 10, U.S. Code, section 1556, 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//