

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012758

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- changing his narrative reason for separation and Separation Program Designator (SPD) code to show he was separated under "Secretarial Authority"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel brief and 18 Exhibits (64 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. Through counsel, the applicant respectfully requests a discharge upgrade based upon grounds of propriety and equity, as he was experiencing service-related mental health conditions and the medications he was prescribed had an adverse impact on his behavior. Granting him relief would be consistent with prior Board decisions that granted upgrades to service members in similar situations and would relieve him of the stigma associated with a less than honorable discharge. Exhibit 15 of counsel's brief is a 7-page autobiography rendered by the applicant that is available in its entirety for the Board's consideration. The applicant provides an explanation of why he decided to enlist in the Army and a synopsis of his time in service.

a. He was initially assigned to a unit at Fort Bliss, TX. Although everything professionally was going very well, he struggled with depression, anxiety, and overall relationships. His unit deployed to Qatar. He was not seeing behavioral health at the time. He met a girl who got attached to his unit as one of their medics. They got along well despite his awkwardness and fear of rejection. He is not sure what happened, but

things started to degrade, and I ended up self-destructing the relationship in fear that he was not good enough and possibly several other things going on in his head I could not straighten out.

b. As they prepared to return home from Qatar, his mental health seemed to decline. He maintained professional standards by being polite and giving his all to any task. He thinks he relied on work and tasks to keep his mind off other things. When they returned, he was promoted to the rank/pay grade of specialist (SPC)/E-4 and was appointed as a squad leader. Soon, he passed the board for promotion to sergeant (SGT)/E-5 and was ready for more responsibility. He wanted to do more and thought about joining the special forces because he heard the special forces groups were in dire need of Soldiers with his military occupational specialty as long as they were Airborne qualified. He reenlisted for Airborne. About a week after passing Airborne school, he received permanent change of stations orders assigning him to 1st Battalion, 10th Special Forces Group in Stuttgart, Germany.

c. Upon arrival to his new unit, he inherited a workspace that needed a lot of work to get up to standards. He worked very hard at doing so and supervisor was impressed with his improvements. Shortly after overhauling the office, it was inspected, and he received a perfect score; the two previous scores were unsatisfactory.

d. After settling in, he became more aware of the office across from his. It was the office of behavioral health with Major (MAJ) S. After many failed attempts to knock on her door, he finally had the courage to do so. Asking for help was difficult, but she seemed to help relieve his tension. He began weekly sessions with her working on Cognitive Behavioral Therapy, which included homework and worksheets. His primary concern when going to these sessions was dealing with his depression and overall feelings of loneliness. He struggles with relationships because he lacks feelings of worthiness. He would consistently have panic attacks because he did not believe he deserved to breathe air. He would hold his breath thinking that the air was better off with someone else. The applicant also described situations during which he experienced insomnia, suicidal ideations, and crying hysterically.

e. He got a new supervisor, Master Sergeant (MSG) B, who was obsessed with telling the applicant that he was drunk and threatening to take him to the military police because of his strange behavior. He constantly berated the applicant day in and day out to the point that he and a fellow squad member and friend felt increasingly uncomfortable. They also observed their company commander, Captain (CPT) M, go on a tirade and discharge three of their friends for no apparent reason. The applicant decided to contact the Inspector General's IG's office to report the actions of MSG B and CPT M. A noncommissioned officer (NCO) from the IG's office took his statements and visited the unit. When the NCO tried to approach the applicant, he was intercepted

by the First Sergeant (1SG), and the applicant never saw the IG NCO again. Many complaints were made, but none were acted upon.

f. The applicant finally decided to confront CPT M himself to reveal to him the unprofessionalism and misconduct of the NCOs in his platoon. That report was followed by negative counseling for being disrespectful toward the NCOs in his platoon. The applicant disagreed with the counseling and the counseling statement disappeared.

g. The applicant was prescribed medications by his mental health care professionals. He felt side effects about 4 weeks later which included, extreme euphoria, lack of inhibitions, compulsive tremors, increased libido, and delayed ejaculation. His doctor reassured him that those symptoms were normal considering the drug and his history. CPT M and MSG B were not happy with his behavior, so he asked his doctors to explain his medical situation to them, but neither of them cared to hear it. One night, he was particularly aroused, and it led to him sending an inappropriate text message to a Soldier called "Flo" with whom he had previously engaged in sex with and desired to foster a relationship. The next morning, he read what he had sent to her and felt bad. He never spoke to her since then and even spoke with his doctors about switching medications. He was prescribed a different medication that does not have the same side effects and continues to take the same medication today.

h. CPT M called the applicant into his office and asked him if he had recently broken into someone's room. He knew full well the applicant was the barracks manager, had a master key, and was firmly convinced that the applicant had done it. He was unprofessional when the applicant proposed that all master keys be confiscated, and the codes be reset. CPT M ignored his concerns and sent him away. An investigation was launched, and nothing was found except when Flo told them he sent her a text several months prior. He told them that he had sent the text and that was all. At the time, they made him feel like some monster. The investigator went so far as to call him "some criminal." It turns out that Flo had spread rumors around her section and in the interest of Flo, the investigator only interviewed her witnesses and not the applicant's. Although he was being threatened with prison time, he figured that there would be no punishment based upon the lack of evidence against him and substantiated evidence provided by his health care providers. They charged me with saying bad words and sentenced him to 45 days of extra duty and a reduction in rank/pay grade.

i. Following receiving disciplinary action, the applicant sought to be transferred to another unit and managed to obtain an invitation to join another unit. His 1SG was furious with his request. Soon after, he was summoned to CPT M's office and informed that he was initiating separation actions against the applicant due to sexual harassment. The applicant was confused because he had already been punished for the crime, and that is illegal, unjust, and immoral. But the separation request was accepted and

processed. In some ways, the applicant was relieved to be leaving the toxic environment of his unit. In the end, he is glad he got away from that place.

j. Since his discharge, he has continued his education in veterinary medicine and pursued his passion to work with animals.

3. On behalf of the applicant, counsel provides a legal brief and 18 exhibits that are available in their entirety for the Board's consideration. Counsel provides a synopsis of the applicant's military service and disciplinary history. Counsel emphasizes the impact that the applicant's prescription medication had on his behavior and contends it was the catalyst for his misconduct. Counsel further contends that the applicant is the victim of a material error of discretion that was made in separating him with a general discharge.

a. The applicant's misconduct was minor and unsubstantiated. The applicant admitted to sending texts that were deemed inappropriate, but they had been sent to a person whom he had a previous romantic relationship with. The applicant was not able to supply any witnesses or testimony to rebut the claims made by the accuser. He felt as if he was being singled out and punished only because his chain of command did not like him. The applicant accepted full responsibility for his actions and was thoroughly punished for them; he did not also have to be separated prematurely with an under honorable conditions (general) characterization of service. The applicant should have been given the opportunity to rehabilitate, as he had already showed a strong initiative of being willing to go to therapy, try medications, and receive the mental health help he needed. It was clearly an error of discretion to not allow the applicant the chance to learn from his mistakes, and his subsequent punishment, and rehabilitate to be able to continue to serve.

b. Not only was the Applicant's misconduct minor. the Applicant was suffering from severe depression, anxiety, alcohol abuse disorder, and attending behavioral therapy at the time of the texts he sent. A memorandum from the Office of the Under Secretary of Defense, on 25 August 2017 (Commonly referred to as the Kurta Memo), provides clarifying guidance on how the ABCMR should assess cases that involve misconduct as a result of mental health conditions. The applicant's mental health issues occurred during his service, which is evident by him receiving treatment during service and the diagnoses being made during the years he was on active duty. There is also evidence of the applicant's mental health condition by way of his change in behavior, as the applicant had no instances of misconduct before the mental health diagnoses. The significance of the applicant's mental condition at the time of the misconduct is evident, and while not an excuse for his behavior, was a significant factor in him participating in misconduct that he otherwise would not have.

c. Counsel provides the following exhibits in support of the petition, some of which will be summarized later in this record of proceedings:

- Exhibit 1 - DD Form 4/1 (Enlistment/Reenlistment Document - Armed Forces of the United States) which shows he enlisted in the U.S. Army Reserve (USAR) Delayed Entry/Enlistment Program (DEP) on 14 December 2015
- Exhibit 2 - DD Form 4/3 which shows he requested to be discharged from the DEP and enlisted in the Regular Army on 27 January 2016
- Exhibit 3 - DA Form 638 (Recommendation for Award) which shows he was recommended for award of the Army Achievement Medal (AAM) for exceptional meritorious achievement from 11 April 2016 to 15 June 2016
- Exhibit 4 - Temporary Change of Station orders which show he was ordered to deploy in support of Operation Inherent Resolve to Qatar for a period not to exceed 270 days commencing on 8 April 2017
- Exhibit 5 - DD Form 4/1 which shows he reenlisted for a period of 4 years on 10 May 2018
- Exhibit 6 - DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period from 25 January 2016 to 13 May 2020
- Exhibit 7 - Orders showing he was promoted from SPC to SGT effective 1 October 2019
- Exhibit 8 - A Letter of Commendation presented to him for scoring 37 targets out of 40 possible targets on the M16 Rifle Qualification Course, the highest in his Basic Combat Training class
- Exhibit 9 - DA Form 2627 (Record of Proceedings Under Article 15 of the Uniform Code of Military Justice (UCMJ)) which shows he received nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ on 20 February 2020
- Exhibit 10 - The applicant's rebuttal to his NJP
- Exhibit 11 - The applicant's discharge orders effective 13 May 2020
- Exhibit 12 - A Letter from the Army Discharge Review Board, dated 22 November 2021
- Exhibit 13 - A page extracted from his behavioral health treatment record which shows he underwent a mental status examination on or about 15 June 2020
- Exhibit 14 - A page extracted from his behavioral health treatment record which shows his active problems as of 20 June 2020 included: Insomnia, unspecified; Major depressive disorder; Other specified problems related to psychosocial circumstances; and Anxiety disorder, unspecified
- Exhibit 15 - The applicant's autobiography
- Exhibit 16 - Office of the Under Secretary of Defense, Washington, DC memorandum, Subject: Clarifying Guidance to Military Discharge Review Boards (DRBs) and BCM/NRs Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017. (Kurta Memorandum)

- Exhibit 17- Character reference letter from BL who served with the applicant in Stuttgart, Germany and rendered favorable comments regarding his professionalism and demeanor
- Exhibit 18 - Character reference letter from KB who has known the applicant for over 2 years and rendered favorable comments about his respectfulness and professionalism while working as a veterinary clinical assistant

4. The applicant enlisted in the Regular Army on 27 January 2016, for a period of 3 years and 22 weeks in the rank/grade of private (PV1)/E-1. Upon completion of training, he was awarded military occupational specialty 74D (Chemical Operations Specialist) assigned to a unit at Fort Bliss, TX. He served in Qatar from 8 April 2017 until 16 January 2018. In December 2018, he was assigned to 1st Battalion, 10th Special Forces Group located in Stuttgart, Germany. He was promoted to SGT/E-5 on 1 October 2019, and that was the highest rank he held while serving.

5. A Headquarters U.S. Army Garrison Stuttgart Law Enforcement Report shows an investigation was conducted regarding the following offenses allegedly committed by the applicant in violation of the UCMJ: Unlawful Entry; Obscene Communication (via mail, telephone, digital, etcetera); Sexual Harassment; and Disorderly Conduct.

a. Several interviews were conducted, screen shots of text messages were examined. The applicant admitted to sending the text messages while under the influence of intoxicating prescription medication but denied entering anyone's room unless conducting official business in his capacity as barracks manager.

b. An Army attorney opined that probable cause existed to believe the applicant committed the offenses of failure to obey a lawful order, indecent language, and disorderly conduct, drunkenness.

6. On 27 January 2020, field grade NJP was imposed upon the applicant under the provisions of Article 15, UCMJ for, violating a lawful regulation by wrongfully conducting himself in accordance with Army sexual harassment policy; by communicating in writing to a female Soldier certain indecent language, and that such conduct was to the prejudice of good order and discipline in the armed forces; and being drunk and disorderly, which conduct was to the prejudice of good order and discipline in the armed forces. His punishment included reduction from SGT/E-5 to SPC/E-4; extra duty for 45 days; and an oral reprimand. The applicant provided a rebuttal to this proposed NJP wherein he admitted the allegation he had used indecent language towards the female Soldier was true, but stated they had been romantically involved and their relationship was complicated. This coupled with strange side effects to the new medication he was prescribed resulted in his misconduct. The applicant accepted the punishment on 12 February 2020

7. The specific facts and circumstances surrounding the applicant's separation including his commander's notification, the applicant's acknowledgement and election of rights, the chain of command recommendations, and the separation authority's final decision are not filed in his available record.

8. However, Orders and the applicant's DD Form 214 show he was discharged from the Regular Army in the rank/grade of SPC/E-4 on 13 May 2020, under the provisions of Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations, paragraph 14-12c(2), by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 4 years, 3 months, and 17 days of net active service this period. He had no time lost and he did complete his first full term of service. He was awarded or authorized the Army Commendation Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, NCO Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon (2nd Award), Parachutist Badge, and Expert Marksmanship Qualification Badge with Carbine Bar.

9. Additionally, his DD Form 214 shows in Block 18 (Remarks) the entry, "IMMEDIATE REENLISTMENT THIS PERIOD: 20160125-20180509, 20180510-20200513" (indicating from 25 January 2016 to 9 May 2018 and from 10 May 2018 to 13 May 2020). There is no entry specifying the applicant's period of honorable service (see Administrative Notes).

10. AR 635-200 states Chapter 14 states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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

12. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge and a change in his narrative reason for separation and Separation Program Designator (SPD) code to show he was separated under "Secretarial Authority". The applicant indicates other mental health conditions as related to his request. 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 in the Regular Army on 27 January 2016.
- A Headquarters U.S. Army Garrison Stuttgart Law Enforcement Report shows an investigation was conducted regarding the following offenses allegedly committed by the applicant in violation of the UCMJ: Unlawful Entry; Obscene Communication (via mail, telephone, digital, etcetera); Sexual Harassment; and Disorderly Conduct.
- On 27 January 2020, field grade NJP was imposed upon the applicant under the provisions of Article 15, UCMJ for, violating a lawful regulation by wrongfully conducting himself in accordance with Army sexual harassment policy; by communicating in writing to a female Soldier certain indecent language, and that such conduct was to the prejudice of good order and discipline in the armed forces; and being drunk and disorderly, which conduct was to the prejudice of good order and discipline in the armed forces. His punishment included reduction from SGT/E-5 to SPC/E-4; extra duty for 45 days; and an oral reprimand. The applicant provided a rebuttal to this proposed NJP wherein he admitted the allegation he had used indecent language towards the female Soldier was true, but stated they had been romantically involved and their relationship was complicated. This coupled with strange side effects to the new medication he was prescribed resulted in his misconduct. The applicant accepted the punishment on 12 February 2020.
- The specific facts and circumstances surrounding the applicant's separation including his commander's notification, the applicant's acknowledgement and election of rights, the chain of command recommendations, and the separation authority's final decision are not filed in his available record.
- However, orders and the applicant's DD Form 214 show he was discharged from the Regular Army in the rank/grade of SPC/E-4 on 13 May 2020, under the provisions of Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations, paragraph 14-12c(2), by reason of Misconduct (Serious Offense), with separation code "JKQ" and reentry code "3." His service was characterized as Under Honorable Conditions (General).
- Applicant applied to the Army Discharge Review Board on 23 June 2020 for an upgrade of his discharge. The applicant's request was denied.

b. 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 through counsel, that he respectfully requests a discharge upgrade based upon grounds of propriety and equity, as he was experiencing service-related mental health conditions and the medications he was prescribed had an adverse impact on his behavior. Granting him relief would be consistent with prior Board decisions that granted upgrades to service members in similar situations and would relieve him of the stigma associated with a less than honorable discharge. Counsel emphasizes the impact the applicant's prescription medication had on his behavior and contends it was the catalyst for his misconduct. Counsel further contends the applicant is the victim of a

material error of discretion that was made in separating him with a general discharge. The applicant's misconduct was minor and unsubstantiated. The applicant admitted to sending texts that were deemed inappropriate, but they had been sent to a person whom he had a previous romantic relationship with. The applicant was not able to supply any witnesses or testimony to rebut the claims made by the accuser. He felt as if he was being singled out and punished only because his chain of command did not like him. The applicant accepted full responsibility for his actions and was thoroughly punished for them; he did not also have to be separated prematurely with an under honorable conditions (general) characterization of service. The applicant should have been given the opportunity to rehabilitate, as he had already shown a strong initiative of being willing to go to therapy, try medications, and receive the mental health help he needed. It was clearly an error of discretion to not allow the applicant the chance to learn from his mistakes, and his subsequent punishment, and rehabilitate to be able to continue to serve. Not only was the applicant's misconduct minor. The applicant was suffering from severe depression, anxiety, alcohol abuse disorder, and attending behavioral therapy at the time of the texts he sent.

c. Hardcopy documentation submitted by the applicant evidences that on 6 November 2019, the applicant entered the barracks of multiple female soldiers using the barracks master key without a valid or lawful reason. The applicant also sent sexually harassing text messages to two female soldiers; however, he was only held accountable for his text messages to one of the soldiers since she kept copies of the text messages and was able to provide them during the investigation. The applicant alleged the harassing text messages were due to side effects of his antidepressant medication. However, sexual harassment is not a side effect of any antidepressant medication. The applicant was repeatedly screened for any evidence of mania which could have contributed to dysregulated behaviors, none were found in his treatment record.

d. A review of active-duty electronic medical records shows the applicant received ongoing cognitive behavioral therapy, psychoeducation regarding sleep hygiene, medication for his symptoms of anxiety and depression, as well as SUD treatment. A note dated 16 April 2019, indicates the applicant self-referred to the battalion psychologist for individual therapy with encouragement from his friend due to "intense loneliness". He endorsed symptoms of anxiety, insomnia, and depression and was diagnosed with Other Specified Problems Related to Psychosocial Circumstances and Unspecified Mood Disorder. He did not meet full criteria for any BH condition, but the clinical impression indicates Rule-out of Major Depressive Disorder, Generalized Anxiety Disorder, and Insomnia. This is an indicator of diagnoses the clinician will further explore in the course of treatment to either confirm or rule-out. The applicant was provided cognitive behavioral therapy and was referred to IBHC, where he was seen on 13 May 2019 and diagnosed with Insomnia, unspecified. He was provided with information on sleep hygiene and ongoing interventions to improve his sleep. On 15

July 2019, the applicant presented to BH services and reported “he broke down crying in front of his supervisor”. The applicant was diagnosed with Major Depressive Disorder, single episode, and was started on medication. On 30 October 2019, the applicant self-referred for SUDDC treatment and on 14 November 2019 he was diagnosed with Alcohol Abuse, uncomplicated.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected for Chronic Adjustment Disorder. He has intermittently participated in behavioral health services via the VA with the focus of his treatment on his perception that his discharge from military service was unjust. A Disability Benefits Questionnaire (specifically for PTSD) dated 10 May 2021 diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood and indicates the applicant did not meet diagnostic criteria for PTSD. The clinician opined that his reported symptoms are attributed to his perception of having been harshly disciplined and betrayed by senior members of his unit. Essentially, the applicant is service-connected due to his distress over having been separated from the military due to his misconduct of engaging in sexual harassment of two female soldiers and unlawfully gaining access to female soldiers’ barracks. Based on the information available, it is the opinion of this Agency Behavioral Health Advisor that the applicant had a behavioral health condition during military service. However, his BH conditions do not mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Adjustment Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, Insomnia, and Alcohol Abuse during military service.

(2) Did the condition exist or experience occur during military service? Yes. There is medical documentation indicating the applicant was diagnosed with the following BH conditions during military service: Adjustment Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, Insomnia, and Alcohol Abuse.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to unlawfully entering the barracks of multiple female soldiers using the barrack’s master key without a valid or lawful reason, as well as sexual harassment. The applicant sent sexually explicit text messages to two female soldiers as well as follow-up messages for over two months to one of the victims, who did not respond. The applicant alleges the sexually explicit text message were sent as a result of the antidepressant medication he was prescribed. However, contrary to his assertion, sexual harassment is not a side effect of antidepressant medication. In addition, none of his diagnosed BH conditions, including, Adjustment Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, Insomnia, and Alcohol Abuse

mitigate his misconduct. There is no nexus between any of his in-service BH conditions and sexual harassment or illegally accessing another soldier's barracks. The applicant engaged in purposeful planned behavior of accessing the barracks of several female soldiers and in behaviors to avoid detection of his actions. Overall, the applicant's BH conditions do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

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 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 applicant was discharged for the commission of a serious offense, due to unlawfully entering the barracks of multiple female soldiers using the barrack's master key without a valid or lawful reason, as well as sexual harassment. The applicant sent sexually explicit text messages to two female soldiers as well as follow-up messages for over two months to one of the victims, who did not respond. The applicant alleges the sexually explicit text message were sent as a result of the antidepressant medication he was prescribed. His service was characterized as Under Honorable Conditions (General). He completed 4 years, 3 months, and 17 days of net active service this period. The Board found no error or injustice in the separation processing.

a. Discharge Upgrade: Deny. 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 determination finding that contrary to his assertion, sexual harassment is not a side effect of antidepressant medication. In addition, none of his diagnosed BH conditions, including, Adjustment Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, Insomnia, and Alcohol Abuse mitigate his misconduct. There is no nexus between any of his in-service BH conditions and sexual harassment or illegally accessing another soldier's barracks. The applicant engaged in purposeful planned behavior of accessing the barracks of several female soldiers and in behaviors to avoid detection of his actions. Overall, the applicant's BH conditions do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

c. Reason for Separation: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 14 of AR 635-200 due to serious misconduct. Absent his misconduct, there was no reason to process him for separation. The underlying reason for his discharge was his misconduct. The only valid narrative reason for separation permitted under chapter

14-12c is "Misconduct" and the appropriate separation code associated with this discharge is JKQ which at the time had a corresponding RE Code of 3.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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 amending his DD Form 214 for the period ending on 13 May 2020 to show: CONTINUOUS HONORABLE SERVICE FROM 20160125 UNTIL 20180509

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 upgrading the characterization of his discharge.

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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. It is not an investigative body.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Paragraph 3-7b states 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.

c. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKQ" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct.

6. Army Regulation 635-8 (Personnel Separations – Separation Processing and Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 5-2f states a DD Form 214 will not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 5-6r(4)(a) of the regulation states that in item 18 for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

7. 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 Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; TBI; 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 to those conditions or experiences.

8. 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//