

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20230013602

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to honorable
- a change to his narrative reason for separation from misconduct – drug abuse to “secretarial authority” or convenience of the government
- an upgrade of his “JKK” separation code
- an upgrade of his “RE-3” reenlistment code

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

- DD Form 149 (Application for Correction of Military Record), 18 September 2023
- Legal Counsel’s Brief in Support of Application
- Exhibit 1: Applicant’s Personal Statement
- Exhibit 2: Medical Records
- Exhibit 3: DD Form 214(Certificate of Release or Discharge from Active Duty), 22 June 1984
- Exhibit 4: Two DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States, from 19 March 1979 and 21 September 1981
- Exhibit 5: Letter of Commendation, 21 March 1980
- Exhibit 6: Letter of Appreciation, 25 July 1980
- Exhibit 7: Letter of Commendation, 11 September 1981
- Exhibit 8: Letter of Commendation, 30 October 1981
- Exhibit 9: Headquarters, U.S. Army Field Artillery Center and Fort Sill Permanent Orders 190-049, 11 October 1983
- Exhibit 10: U.S. Army Culinary Certificate, 11 March 1983
- Exhibit 11: Certificate of Achievement, 29 November 1983
- Exhibit 12 Certificate of Promotion, 1 December 1981
- Exhibit 13 Two DA Forms 2166-6 (Enlisted Evaluation Report), for the period covering March 1982 through July 1982

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 born in [REDACTED]. His family moved to [REDACTED] when he was a year old, and he was raised in a Christian home where his grandfather, a World War II veteran and school principal, served as their church's music director. Inspired by both grandfather and his father, who served in Vietnam, he joined the Army after his 18th birthday with hopes of becoming a doctor. During basic training, he was told the Army had filled its medical slots and that his eyesight disqualified him. Rather than leave, he chose to become a cook, so he could still serve and learn a practical skill.
 - a. He was stationed in Germany with the 1/33 Armor Division, where he earned a reputation as a dependable and high-performing soldier, achieving the rank of sergeant in two and a half years. In 1981, he was sexually assaulted while stationed in Gelnhausen, which he kept secret for decades. He carried the trauma in silence, struggling with untreated post-traumatic stress disorder (PTSD) and turned to drugs and alcohol to cope. The emotional toll eventually led to his discharge in 1984. He withdrew from relationships, battled depression, and spent years feeling ashamed, isolated, and broken.
 - b. After hitting rock bottom and becoming homeless, he sought help at the Department of Veteran's Affairs (VA) in 2014. He received treatment for PTSD, addiction, and physical health issues, spending 21 months in long-term care in [REDACTED]. He has been sober since 14 May 2014, and with the support of treatment, his sponsor, and his faith, he has begun to rebuild his life.
3. Counsel states, in part, the applicant maintained a distinguished record for most of his military career, and even represented the U.S. on the Army Culinary Team. It was only after he was sexually assaulted by his commanding officer that his career began to falter. Immediately after the incident, the applicant requested to be transferred to another division but feared reporting the male on male sexual assault due to the homophobic policies in place at the time, but his request was denied. For the next six months, the applicant had to report directly to the man who sexually assaulted him. As his mental health began to deteriorate, he began to self-medicate to cope with his trauma. It was this self-medication that eventually led to his other than honorable discharge. The applicant's discharge did not take into account his mental health conditions and traumatic experiences. His DD Form 214 includes the separation code "JKK", indicating drug use. This narrative reason is stigmatizing and may affect

employment opportunities. His past drug use was a symptom of self-medicating as a result of the mental health problems caused by the sexual assault he suffered during his service.

4. Counsel provides thirteen exhibits of military correspondence and medical records showing the applicant's PTSD treatment program he completed through the VA and his accomplishments, to include awards, certificates, and evaluations, he earned while in the Army. All thirteen exhibits are available for the board to review in the supporting documents.

5. A review of the applicant record shows:

a. He enlisted in the Regular Army on 19 March 1979.

b. On 5 November 1981, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 2 November 1981 wrongfully possess marijuana, a controlled substance. His punishment included reduction to the rank/grade of specialist/E-4 (suspended until 31 March 1982), and 28 of extra duty.

c. On 30 May 1984, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, between on or about 17 April 1984 and 27 April 1984, knowingly and wrongfully use some amount of marijuana. His punishment included reduction to the rank/grade of private/E-1, forfeiture of \$298.00 per month for two months, 45 days restriction and 45 days of extra duty.

d. On 4 April 1984, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, between on or about 21 January 1984 and 30 January 1984, knowingly and wrongfully use some amount of marijuana. His punishment included reduction to the rank/grade of specialist/E-4, forfeiture of \$444.00 per month for two months, 45 days restriction and 45 days of extra duty.

e. The applicant's complete separation packet pertaining to his discharge are not available for the Board to review.

f. The applicant was discharged on 22 June 1984. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12d, by reason of misconduct - drug abuse, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 5 years, 3 months, and 4 days of net active service. He was assigned the separation code of "JKK" and the reenlistment code of "RE-3". Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- Army Good Conduct Medal (1st Award)
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification with Rifle Badge (M-16)
- Expert Marksmanship Qualification Badge (hand grenade)

6. On 5 December 1990, the Army Discharge Review Board notified that applicant that his request for an upgrade of his characterization of service and a change to his narrative reason for separation was denied.

7. On 25 April 2024, the Criminal Investigation Division notified the Army Review Boards Agency that a search of the Army criminal file indexes revealed no sexual assault records pertaining to the applicant.

8. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable as well as more favorable narrative reason for separation, separation code, and RE code. The applicant selected PTSD and MST on his application as related to his request.

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:

- Applicant enlisted in the Regular Army on 19 March 1979.
- Applicant served in Germany from 12 August 1979 to 20 September 1982.
- On 5 November 1981, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 2 November 1981 wrongfully possess marijuana, a controlled substance.
- On 30 May 1984, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, between on or about 17 April 1984 and 27 April 1984, knowingly and wrongfully use some amount of marijuana.

- On 4 April 1984, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, between on or about 21 January 1984 and 30 January 1984, knowingly and wrongfully possess marijuana.
- Applicant's complete separation packet pertaining to his discharge are not available for the Board to review.
- Applicant was discharged on 22 June 1984. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12d, by reason of misconduct - drug abuse, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 5 years, 3 months, and 4 days of net active service. He was assigned separation code of "JKK" and reenlistment code "RE-3".

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was stationed in Germany with the 1/33 Armor Division, where he earned a reputation as a dependable and high-performing soldier, achieving the rank of sergeant in two and a half years. In 1981, he was sexually assaulted while stationed in Gelnhausen, which he kept secret for decades. He carried the trauma in silence, struggling with untreated Post Traumatic Stress Disorder (PTSD) and turned to drugs and alcohol to cope. The emotional toll eventually led to his discharge in 1984. He withdrew from relationships, battled depression, and spent years feeling ashamed, isolated, and broken. After hitting rock bottom and becoming homeless, he sought help at the Department of Veteran's Affairs (VA) in 2014. He received treatment for PTSD, addiction, and physical health issues, spending 21 months in long-term care in [REDACTED]. He has been sober since 14 May 2014, and with the support of treatment, his sponsor, and his faith, he has begun to rebuild his life.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD. The medical record shows a history of homelessness and polysubstance dependence for which he has participated in several residential treatment programs. The applicant has also been treated by the VA for symptoms of PTSD stemming from military sexual trauma. He participated in residential treatment programs for PTSD on two occasions (in 2015 and 2018). He currently reports successfully abstaining from substance use.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an

experience and subsequently a behavioral health condition during military service 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 selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports being sexually assaulted while stationed in Germany.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to wrongfully possessing and using marijuana. The available VA electronic medical record shows the applicant is service connected for PTSD and has participated in specialty treatment for the disorder, including inpatient residential treatment for PTSD. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's possession and use of marijuana are both mitigated by his BH condition.

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 record and medical review, the Board concurred with the advisory opinion of the Agency Behavioral Health Advisor finding there is sufficient evidence to support the applicant had an experience and subsequently a behavioral health condition during military service that mitigates his misconduct.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports being sexually assaulted while stationed in Germany.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to wrongfully possessing and using marijuana. The available VA electronic medical record shows the applicant is service connected for PTSD and has participated in specialty treatment for the disorder, including inpatient residential treatment for PTSD. Given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant’s possession and use of marijuana are both mitigated by his BH condition.

3. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct for the misconduct to weigh a clemency determination. The Board agreed given the nexus between PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition. The Board found that partial relief was warranted based upon guidance for liberal consideration of discharge upgrade requests.

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 reissuing the applicant's DD Form 214 for the period ending 22 June 1984 showing his character of service as general, under honorable conditions.

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 upgrade of his characterization of service from under other than honorable conditions to honorable, change to his narrative reason for separation from misconduct – drug abuse to “secretarial authority” or convenience of the government, an upgrade of his “JKK” separation code and upgrade of his “RE-3” reenlistment code.

X 

CHAIRPERSON

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-3 (Secretarial Plenary Authority) provided that:

(1) 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.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarter, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

b. Chapter 14 established policy and procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

c. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

d. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

e. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12d for misconduct would receive a separation code of "JJK."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

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; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//