

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230014038

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Two DD Forms Number 256A (Honorable Discharge Certificate) given on 8 January 1980 and 1 July 1985
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 13 January 1988

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999016297 on 17 February 1999.

2. As a new contention, the applicant states:

a. He is seeking an upgrade due to numerous prior evaluations of superior service with only one error in judgement. He had an affair with a coworker which was also consensual. This upset the commander and first sergeant due to race issues. he is black and the two women were white. He was made an example of. The Judge Advocate General's Corps office was not supportive of his position. He is requesting an honorable characterization, as this is most of his service.

b. The matter was a personal issue that should have never become known. A jealous woman is hard to deal with and if race is also an issue in the case. His commander and first sergeant were white and did not like the fact that he was dating white women in the battalion, but not his company. This was a racial incident that he is paying the price for. Instead of going for the court-martial he was talked into taking the Chapter 10 much to his regret, he should have taken the court-martial. He did not commit adultery as charged and he was making a building inspection while a female

was taking a shower, no one confirmed the status. Additionally, his application to the Board notes his request is related to post-traumatic stress disorder (PTSD), other mental health issues, sexual assault/harassment, and reprisal/whistleblower.

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

a. He enlisted in the Regular Army on 8 February 1977 and had two immediate reenlistments on 8 January 1980 and 2 July 1985.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in Germany from 25 July 1982 to 28 July 1985.

c. The applicant received a letter of reprimand on 2 December 1986 for driving under the influence as determined by a conducted test of .16 percent. His commander approved the letter of reprimand on 19 December 1986 and directed that it be filed in his military personnel record jacket for a period of 3-years or until reassignment to another general court-martial jurisdiction.

d. DA Form 4466 (Alcohol and Drug Abuse Prevention and Control Program Client Progress Report), dated 9 March 1987 shows the applicant attended individual and group counseling. His counselor rated his progress in the program as fair, and his commander rated him as satisfactory. He completed the program and was released for retention on active duty.

e. On 30 October 1987, court-martial charges were preferred against the applicant for oppression and maltreatment of a person subject to his orders by deliberately and repeatedly making offensive comments and gestures of a sexual nature; committing an indecent assault upon a Soldier, a person not his wife, by pinning her against a wall and rubbing his body against hers until he had an erection, with intent to gratify his lust and sexual desires; committing an indecent assault upon a Soldier, a person not his wife, by placing his hand on her clothed breast and squeezing her breast, with intent to gratify lust and sexual desires; wrongfully having sexual intercourse with a Soldier, a woman not his wife; and unlawfully entering the barracks room of a Soldier.

f. On 24 January 1988, the applicant, through counsel, submitted a request for discharge for the good of the service-in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense

- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- if his request for discharge was accepted, he may be discharged under conditions other than honorable (UOTHC) and furnished an UOTHC certificate
- he would be deprived of many or all Army benefits, that he may be ineligible for many, or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

g. He elected to submit a statement in which he states, he enlisted in the Army and has honorably served as both a combat engineer and a medic. Overall, he performed his duties to his country in an exceptionally good manner. In June 1979, he married his wife and has two children, which live in Brooklyn, New York, with his mother—in-law. His wife was not happy with the Army life and desired her own career.

(1) The discontentment started to manifest itself in domestic problems across the board as early as 1981 when they were stationed at Fort Ord, California. His domestic life really deteriorated in 1982 when he was assigned to Germany. Initially, his family was with him overseas. However, his wife left him in Germany, taking their son and returning to the United States in 1983. They were separated for 2 years. They reunited at Fort Lewis in 1985. They made attempts at reconciling their differences. His family life was going well for the first couple of months. After that, it was the same old story. His wife was letting his military duties get in the way of their relationship. His wife was pregnant with their second child, which did not improve matters. His wife eventually told him that she was leaving him once the baby was born.

(2) When his daughter was about six-months old, his wife filed for divorce and took both of his kids with her back to Brooklyn. His marriage was over. He wishes he had the will power and self-control and avoided any sexual contact with women until his divorce was over. He understands that, technically, he broke the military law that prohibits "adultery". What is so ironic is that the incident took place in a state where adultery is not a crime. In any event, his weakness has cost him a promising military career. He is asking to leave the Army with the modicum of dignity that a general discharge will allow him. He is not a criminal.

h. On 6 January 1988, the separation authority approved the applicant's discharge for the good of the service. He directed the applicant receive a discharge under other than honorable conditions and immediate reduction to private (PVT)/E-1 prior to the execution of the discharge.

i. On 13 January 1988, he was discharged accordingly. His DD Form 214 shows he completed 10 years, 11 months, and 13 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Driver Badge, Army Good Conduct Medal (3rd Award), Non-Commissioned Officer Development Ribbon (1), Expert Infantry Badge, Overseas Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): Chapter 10, AR 635-200
- item 26: KFS
- item 27 (Reenlistment Code): 4
- item 28 (Narrative Reason for Separation): For the Good of Service – In Lieu of Court-Martial

5. The applicant provides two DD Forms Number 256A (Honorable Discharge Certificate) dated 7 January 1980 and 1 July 1985.

6. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 23 February 1989, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

7. The applicant petitioned the ABCMR for an upgrade of his service characterization. The ABCMR considered his request on 17 February 1999, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

8. The ABCMR on 21 February 2024 requested a redacted criminal investigation division (CID) and military police report regarding sexual assault from CID. The CID provides a military police report which shows the applicant had sexually harassed and sexually assaulted a female Soldier on or about 1 October 1987. It was also learned that between the dates of 10-15 September 1987 the applicant entered a barracks room without permission while a female Soldier was attempting to get dressed.

9. The ABCMR on 21 February 2024 requested an Inspector General (IG) record. The IG Agency action requests system did not locate any records responsive to the request.

10. By regulation, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

11. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

12. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, and sexual assault/harassment (MST) 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:

- The applicant enlisted into the Regular Army 8 February 1977 and had two immediate reenlistments on 8 January 1980 and 2 July 1985.
- The applicant received a letter of reprimand in December 1986 for driving under the influence, and on 30 October 1987 he had court-martial charges preferred against him for several offenses related to sexual misconduct and assault. He requested a discharge for the good of the service in lieu of trial by court martial, which was approved on 6 January 1988.
- The applicant was discharged on 13 January 1988, and he completed 10 years, 11 months, and 13 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant checked the boxes in his application indicating PTSD, Other Mental Health, and MST were factors in his misconduct. In his narrative response he indicates the sexual encounter between him and two women was consensual, and his command's decision to pursue charges was racially motivated. The application includes a letter signed by the applicant stating that he has "never seen anyone for PTSD" and "that when the VSO was asking me questions about the situation, he may have thought that I had seen someone in the past for PTSD." The letter indicates the applicant is not asserting that PTSD is related to his discharge. The application also contained a progress report from ADAPCP (Alcohol and Drug Abuse Prevention and Control Program) indicating successful completion of the requirements of the program. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and MST at the time of the misconduct. The applicant provided a signed letter stating that he has not been diagnosed with PTSD and that he is not seeking services for PTSD. There were no mental health records provided and no records in JLV.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence that the applicant was experiencing a mental health condition, including PTSD, while on active service. Although the applicant checked the box that his misconduct was related to MST, he clarifies in the letter that racial discrimination is the primary mitigating factor. Nonetheless, there is no nexus between a history of MST and the applicant's charges of misconduct related to sexual assault.

g. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with oppression, maltreatment, and assault of another Soldier by making offensive statements and comments sexual in nature and placing his hand on her clothed breast and squeezing, committing assault with a different Soldier by rubbing his body against hers until he had an erection, having sexual intercourse with a different woman, not his wife, and entering the barracks room of a Soldier, offenses punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board

noted the applicant's contention of post-traumatic stress disorder and military sexual trauma; however, reviewed and concurred with the medical advisor's review finding insufficient evidence he experienced a mental health condition while on active service and finding no nexus between a history of military sexual trauma and the applicant's misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. Prior to closing the discussion, the Board noted and concurred with the administrative notes remark to add the applicant's continuous honorable service to his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Number AR1999016297 on 17 February 1999.

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.

ADMINISTRATIVE NOTE

A review of the applicant's service records indicates a remark was omitted from his DD Form 214. As a result, amend his DD Form 214 to add: "CONTINUOUS HONORABLE ACTIVE SERVICE 770208-850201."

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, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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.

b. Paragraph 3-7b (General Discharge) 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 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the Soldier's overall record during the current enlistment.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for career management of Army enlisted personnel. Paragraph 8-11 (Approved for Discharge from Service Under Other Than Honorable Conditions) states when the general court-martial authority determines that a Soldier is to be discharged from the service under other than honorable conditions, he will be reduced to the lowest enlisted grade. Board action is not required for this reduction. The commander having general court-martial jurisdiction will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier be reduced to private, E-1.

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 Discharge Review Boards and Boards for Correction of Military/Naval Records (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. Section 1556 of Title 10, United States Code, 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//