

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230014284

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record), 4 October 2023
- Department of Veterans Affairs (VA) Initial Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire

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 his military sexual trauma (MST) and PTSD was the reason for his actions, which led to his discharge. He was recently diagnosed and is requesting an honorable discharge.
3. The applicant enlisted in the Regular Army on 24 April 1986.
4. A DD Form 2329 (Record of Trial by Summary Court-Martial) shows the applicant was found guilty of being absent without leave (AWOL) on or about 23 January 1988 to 2 February 1988 and on or about 13 February 1988 to 4 March 1988. He was sentenced to 45 days restriction. The sentence was approved and ordered to be executed on 5 April 1988.
5. On 4 April 1989, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for wrongfully using marijuana and cocaine, between on or about 17 December 1988 and 17 January 1989. His punishment imposed was reduction to E-1, forfeiture of \$349.00 pay per month for two months, 45 days extra duty, and 45 days restriction.

6. On 9 April 1989, the applicant underwent a mental status evaluation for consideration of a misconduct discharge. The relevant DD Form 3822-R (Report of Mental Status Evaluation) shows he was found to have the mental capacity to understand and participate in the proceedings additionally he was cleared for administrative action deemed appropriate by the Command.
7. On 24 April 1989, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c (Commission of a Serious Offense). The commander recommended the applicant receive a general discharge and noted the specific reasons for the proposed separation were his finding of guilty in a Summary Court-Martial his Article 15 for wrongful use of marijuana and cocaine.
8. The applicant consulted with counsel on the same date and was advised of the basis for the contemplated action to separate him and of the rights available to him. He acknowledged he may encounter substantial prejudice in his civilian life. He elected not to submit a statement in his own behalf.
9. On 24 April 1989, the applicant's immediate commander formally recommended the applicant be separated under AR 635-200, paragraph 14-12c (commission of a serious offense) further recommending an under honorable conditions (General) discharge.
10. On 27 April 1989, the applicant's intermediate commander recommended approval for the applicant's elimination with an under honorable conditions (General) discharge.
11. On 2 May 1989, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12c, commission of a serious offense. He further directed the applicant be furnished a under honorable conditions (General) discharge.
12. The applicant was discharged on 9 May 1989, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – abuse of illegal drugs, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he received an under honorable conditions (General) characterization of service with separation code JKK and reenlistment code RE-3, 3B and 3C. He completed 2 years, 11 months, and 16 days of active service. He had time lost from 23 January 1988 to 1 February 1988 and from 13 February 1988 to 3 March 1988.
13. The applicant provides his VA, Initial PTSD Disability Benefits Questionnaire, which shows he was diagnosed with PTSD with delayed expression, major depressive disorder moderate to severe, cannabis use disorder, relationship distress with spouse or

intimate partner. Additionally, it states the applicant claimed he was raped by his bunkmate and began abusing drugs and alcohol.

14. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under honorable conditions (general). He contends he experienced military sexual trauma (MST) and resultant PTSD that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in Regular Army on 24 October 1984; 2) On 30 March 1990, court-martial charges were preferred on the applicant for being AWOL from 12 December 1989-29 March 1990; 3) The applicant was discharged on 5 June 1990, Chapter 10- for the good of the service in lieu of trial by court-martial. His characterization of service was UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. On his application, the applicant noted MST and resultant PTSD were related to his request as contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

e. A review of JLV provided evidence the applicant has been engaged with treatment for PTSD related to MST. In 2018, he was awarded service-connected disability for PTSD related to his experience of MST and his resulted symptoms of PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

g. Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced MST and resultant PTSD while on active service. The applicant was diagnosed with service-connected PTSD related to MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced MST and resultant PTSD while on active service. The applicant was diagnosed with service-connected PTSD related to MST by the VA.

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

BOARD DISCUSSION:

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 separated for misconduct with the commander citing a conviction by summary court-martial for being absent without leave from 23 January 1988 to 2 February 1988 and from 13 February 1988 to 4 March 1988. Additionally, he received nonjudicial punishment for wrongful use of marijuana and cocaine. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board minority concurred with the medical advisor's review finding sufficient evidence to support the applicant's assertion he experienced military sexual trauma while on sexual trauma mitigated his misconduct. However, the Board majority was not convinced based on a preponderance of the evidence and concluded the characterization of service the applicant received upon separation was appropriate.

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 correction of the records of the individual concerned.

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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, 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. AR 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 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.

4. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

5. 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//