

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230014322

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) character of service
- a different separation code

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- two statements of support, dated 3 September and 5 September 2023

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. The applicant states he was physically and verbally assaulted during basic training leading him to flee. During his period of service, he actively sought help for his problems and was denied treatment. He had visible wounds which he presented to his family after training. He notes post-traumatic stress disorder (PTSD), other mental health, and sexual assault/harassment, are related to his discharge.
3. The applicant enlisted in the Army National Guard on 21 January 1987. He was ordered to active duty for the completion of initial entry training on 4 September 1987.
4. The applicant was reported absent without leave (AWOL) on 21 January 1988 and was subsequently dropped from the rolls on 20 February 1988. He surrendered to military authorities on 26 February 1988 and was returned to duty.
5. Court-martial charges were preferred against the applicant on 7 March 1988 for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge

Sheet) shows he was charged with being AWOL from on or about 21 January 1988 until on or about 26 February 1988.

6. The applicant consulted with legal counsel on 7 March 1988.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

7. On 14 March 1988, the applicant's immediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of an under other than honorable conditions discharge. The commander opined, [the applicant] was not motivated for continued service and would likely not respond to counseling or rehabilitation.

8. The separation authority approved the applicant's request for discharge on 8 April 1988 and directed the issuance of a DD Form 794A (Under Other Than Honorable Conditions Discharge Certificate).

9. Accordingly, the applicant was discharged on 5 May 1988, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial. His DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms his service was characterized as under other than honorable conditions, with separation code KFS and reenlistment code RE-3. He was credited with 6 months and 7 days of net active service, with lost time from 21 January 1988 to 25 February 1988. He did not complete training and was not awarded a military occupational specialty.

10. On 21 March 2024, the Army Review Boards Agency (ARBA) sent an email to the applicant requesting medical documentation to support his mental health issues. To date, no additional documentation has been received.

11. In the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

12. The applicant provides two statements of support from his brother and mother, dated 3 September and 5 September 2023, wherein they state, in effect, the applicant was one of many Veterans who were a major part of training operations in preparation for the Gulf War. He came home from basic training with visible physical injuries and deep emotional scars that have torn their family apart. He is a shadow of the person they once knew. It is as if he carries the weight of unspeakable horrors. He desperately sought help for his injuries, but his pleas were ignored. He was discarded when his injuries no longer suited the Army's needs. He sacrificed so much for our country and deserves the utmost care and support. He faithfully served and should receive the recognition and benefits he deserves.

13. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate. Regulatory guidance also provides "KFS" is the appropriate separation code for discharges for the good of the service - in lieu of court-martial.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) character of service, and a different separation code. He contends he experienced military sexual trauma (MST) and mental health conditions including PTSD that mitigates his misconduct. 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 the Army National Guard of the United States on 21 January 1987. He was ordered to active duty for the completion of initial entry training on 4 September 1987; 2) Court-martial charges were preferred against the applicant on 7 March 1988 for being AWOL from 21 January-26 February 1988; 3) The applicant was discharged on 5 May 1988, Chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as UOTHC, with separation code KFS. He was credited with 6 months and 7 days of net active

service, with lost time from 21 January 1988 to 25 February 1988. He was not awarded a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experienced MST and mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service. In addition, there is insufficient evidence the applicant reported MST while on active service.

d. A review of JLV was void of medical documentation, and the applicant does not receive any service-connected disability. No additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support 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 misconduct? Yes, the applicant asserts he experienced MST and mental health conditions including PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced MST and mental health conditions including PTSD while on active service, which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced MST or a mental health condition including PTSD, while he was on active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to MST and some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or MST. Yet, the applicant contends he was experiencing a mental health condition and MST that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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 DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade: Deny. The available evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available separation processing. 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 insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, although the applicant provided statements from family members in support of a clemency determination, the Board noted that the applicant did not complete initial entry training and was not awarded an MOS. The statements he provides did not outweigh the misconduct for which he was discharged. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after he was separated under the provisions of chapter 10 of AR 635-200. He went AWOL and when court-martial charges were preferred against him, he chose the voluntary discharge in lieu of trial by a court-martial in accordance with chapter 10 of AR 635-200. Except for his misconduct and subsequent court-marital charges, there was no reason for him to submit a request for voluntary discharge under chapter 10 of AR 635-200. The underlying reason for his discharge was his request for voluntary discharge in lieu of trial by court-martial. The only valid narrative reason for separation permitted under chapter 10 of AR 635-200 is "in Lieu of Trial by Court-Martial." The Board found no error or injustice in the reason for his separation and the applicant did not provide a convincing reason to change it.

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, USC, 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 USC, 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 635-5-1 (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 "KFS" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial.
4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - b. 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.

c. 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.

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 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief 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//