

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000497

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge
- a different narrative reason for separation
- restoration of his rank/grade to private first class/E-3
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- In-service personnel documents

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 suffering from post-traumatic stress disorder (PTSD) due to military sexual trauma (MST). None of his leadership tried to help him with this underling issue. His leadership retroactively gave him Article 15s and took his rank because his wife at the time, got one of his sergeants in trouble. His leadership looked for a reason to punish him. They couldn't find a justified reason to kick him out because he was a good Soldier, so they pushed him out on the basis of an event that they knew was false. If he knew what he knows now, he would have proved his innocence and remained in the Army. He joined the Army to serve his country and make it a career. His discharge has caused massive trauma that he still grapples with to this day, in addition to the MST incident. His discharge represents failures of the Army on so many levels. He was taken advantage of by his leadership. His discharge and the MST completely damaged the trajectory of his life. It impedes his reenlistment in the National Guard.

3. On his DD Form 149, the applicant notes PTSD, MST, other mental health, and reprisal/whistleblower issues are related to his request.

4. On 24 March 2005, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). The highest grade he attained was E-3.
5. A Military Police Report shows the applicant was arrested on 12 July 2006, for simple assault – consummated by a battery (on post).
6. The applicant received formal counseling on 12 July 2006, for a physical altercation involving his wife. He was ordered not to have any contact with his wife for 72 hours.
7. On 12 September 2006, the applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for assaulting his spouse by grabbing her legs and arms and climbing on top of her, on or about 12 July 2006. His punishment included reduction to E-2, forfeiture of \$333.00 pay, and 14 days extra duty and restriction.
8. The applicant received formal counseling on 16 October 2006, for failing to report, having alcohol in his house, and disobeying a direct order.
9. On 5 January 2007, the applicant received NJP under Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty, on or about 10 October 2006. His punishment included reduction to E-2, forfeiture of \$340.00 pay for one month, and 14 days extra duty and restriction.
10. The applicant's commander notified the applicant on 6 March 2007, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense. He noted the applicant's NJPs for assaulting his spouse and failing to report.
11. On 6 March 2007, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.
  - a. He waived consideration of his case by an administrative separation board.
  - b. He declined to submit a statement in his own behalf.
  - c. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a under honorable conditions (general) discharge was issued to him.
12. The applicant's commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, Chapter 14.

13. By legal review the applicant's separation action was found to be legally sufficient for further processing.

14. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 9 March 2007, with an under honorable conditions (general) characterization of service.

15. On 26 March 2007, the applicant was reduced in rank to private/E-1, for adverse action in January 2007.

16. The applicant was discharged on 27 March 2007, in the grade of E-1. He was credited with 2 years and 4 days of net active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- Item 24 (Character of Service) – under honorable conditions (general)
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, PARA 14-12c
- item 26 (Separation Code) – JKQ
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

17. Additionally his DD Form 214 shows he was awarded or authorized the:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Expert Marksmanship Badge with Rifle Bar

18. The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 11 December 2013, the Board voted to deny relief and determined his discharge was both proper and equitable.

19. On 16 April 2024, the ABCMR staff requested that the applicant provide medical documents to support his PTSD, MST, anxiety, and depression issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

20. On 29 April 2024, the ABCMR staff again requested that the applicant provide medical documents to support his PTSD, MST, anxiety, and depression issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

21. In the processing of this case, a search of the U.S. Army Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

22. 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.

23. MEDICAL REVIEW:

a. Background: The applicant is requesting upgrade of his under honorable conditions (general) discharge, a more favorable narrative reason for separation, and restoration of his rank/grade to private first class/E-3. He indicates on his application that his discharge is impeding his ability to gain entry into the National Guard. The applicant selected PTSD, OMH, MST, and reprisal/whistleblower on his application as related to his request.

b. This opine will narrowly focus on the applicant's request for an upgrade and will defer the remaining requests to the Board.

c. 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 24 March 2005.
- A Military Police Report shows the applicant was arrested on 12 July 2006, for simple assault – consummated by a battery (on post).
- The applicant received formal counseling on 12 July 2006, for a physical altercation involving his wife. He was ordered not to have any contact with his wife for 72 hours.
- On 12 September 2006, the applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for assaulting his spouse, on or about 12 July 2006.
- The applicant received formal counseling on 16 October 2006, for failing to report, having alcohol in his house, and disobeying a direct order.
- On 5 January 2007, the applicant received NJP under Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty, on or about 10 October 2006.
- Applicant's commander notified the applicant on 6 March 2007, that he was initiating action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense. He noted the applicant's NJPs for assaulting his spouse and failing to report.

- On 6 March 2007, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.
- On 26 March 2007, the applicant was reduced in rank to private/E-1, for adverse action in January 2007.
- The applicant was discharged on 27 March 2007, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His DD Form 214 confirms his character of service was under honorable conditions (general), with separation code JKQ and reenlistment code RE-3.
- The applicant petitioned the Army Discharge Review Board requesting upgrade of his under honorable conditions (general) discharge. On 11 December 2013, the Board voted to deny relief and determined his discharge was both proper and equitable.

d. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "I was never even told that I was being discharged due to the event they knew was fictitious, yet still claimed it as a serious offense, I was told I was being discharged due to my underage drinking. I joined as an impressionable teenager and just wanted to serve my country and make a difference, but I was taken advantage of by my leadership. Then they forced me out, and I was young and dumb and didn't fight to stay. If the army wanted me gone why fight to stay, I know when I am not wanted somewhere. I still suffer from server PTSD, anxiety, and depression from these events, and am just looking for the record to be corrected, because I was a stellar soldier and a rising star in the ranks before the incident and no one tried to help they exasperated the problem. This action completely changed the trajectory of my life and ruined my twenties, over ten years gone running from the trauma I experienced in that unit."

e. Active-duty electronic medical records available for review indicate the applicant was initially seen by behavioral health services on 19 December 2006 for a chapter 14 mental status evaluation. The report indicates no prior mental health encounters, and he did not present with any issues and did not receive a diagnosis. A 9 January 2007 note indicates the applicant was participating in ASAP and was diagnosed with Alcohol Abuse. A note dated 11 January 2007 indicates interpersonal relational problems. An encounter dated 22 January 2007 indicates the applicant continued participating in ASAP and had participated in an anger management group; he was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct. He was later diagnosed with Adjustment Disorder with Mixed Emotional Features. The applicant participated in behavioral health services until his discharge and was supported via therapy and medication.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 20% service connected for a lumbosacral strain. The applicant is not service connected for any behavioral health condition. His recent psychiatry encounter dated 17 July 2024

listed his diagnoses as follows: Chronic alcoholism in remission, Anxiety, Persistent insomnia, and Social anxiety disorder.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD, OMH, MST, and reprisal/whistleblower on his application.

(2) Did the condition exist or experience occur during military service?. The applicant was diagnosed with Alcohol Abuse and Adjustment Disorder during military service following his misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A military police report shows the applicant was arrested on 12 July 2006, for simple assault – consummated by a battery (on post). The narrative description of the assault in the military police report indicates the applicant was involved in an altercation with his wife which became physical, and he strangled her and struck her on the back with a closed fist. Despite selecting PTSD, OMH, MST, and reprisal/whistleblower on his application, the applicant provides no details, or any information related to an MST or regarding reprisal/whistleblower. In addition, in his statement the applicant reports experiencing trauma due to being discharged from the military. Although he might have experienced it as a hardship, being discharged from military service is not an index trauma that meets the diagnostic criteria for PTSD. Regardless of diagnosis or adverse experience, the applicant's misconduct of physically assaulting his wife would not be mitigated by any of his asserted conditions. There is no nexus or natural sequelae between the asserted conditions and physical assault. Specifically, these conditions/circumstances do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions. Regarding his assertion of MST, this is not mitigating either; MST experiences do not propel an individual to subsequently physically assault another.

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 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 records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The opine noted, there is no nexus or natural sequelae between the asserted conditions and physical assault.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of assault against your spouse. The Board noted, the applicant provided no post service achievements or character letters or support for the Board to weigh a clemency determination. The Board found, based on the preponderance of evidence the narrative reason for separation was not in error or unjust. The Board agreed, there is insufficient evidence to warrant restoration of his rank/grade to private first class/E-3. The applicant was discharged for commission of a serious offense and was provided an under honorable conditions (general) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

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.

[REDACTED]

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. Title 10, U.S. Code, Section 1556, 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. 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.



a. Paragraph 2-9 states 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.

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.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) 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. At the time, this regulation prescribed the separation code "JKQ" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for misconduct (serious offense).

5. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

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//