

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240002084

APPLICANT REQUESTS:

- Change Narrative Reason for Separation – Local Imposed Bar to Reenlistment
- Change Separation Code – KGF (Locally Imposed Bar to Reenlistment)
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 separated because of harassment from his first sergeant and other Soldiers. His separation was due to stress imposed by his first sergeant and other Soldiers. He felt he was being sexually and mentally harassed. This caused him to suffer from mental and physical stress. He feels that he should not had a bar to reenlistment composed on him because he suffered from PTSD from the sexual and mental trauma. This is the reason why he asked for an early discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 15 July 1991.
 - b. A DA Form 4126-R (Bar to Reenlistment Certificate) dated 12 August 1992, shows the commander-imposed a bar to reenlistment on the applicant for:
 - Item 9 (Record of Non-Payment of Just Debts (Indicate date of letters of indebtedness, counseling, and results)): 15 returned checks from 19 June 1992 thru 31 July 1992 in the sum of \$ 796.97.

- Item 10 (Other Factual and Relevant Indicators of Unattainability or Unsuitability:
 - Counseled 20 June 1992 (Verbally)
 - Counseled 10 July 1992
 - Check Writing Class 23 July 1992

c. Orders 23-128, dated 26 January 1993, discharged the applicant from active duty with an effective date of 23 February 1993.

d. On 23 February 1993, he was discharged from active duty with an honorable discharge characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 7 months and 9 days of active service with no of lost time. He was assigned separation code KGF and the narrative reason for separation listed as "Local Imposed Bar to Reenlistment," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Army Lapel Button

e. The record is void of DA Form 2-1 (Personnel Qualification Record).

f. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review.

4. On 28 August 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding MST and no records were found.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

7. 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.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting changes in his separation authority, narrative reason for separation, and separation code. He states:

"I separated because of harassment from my 1st sergeant and other soldiers. Sexual harassment and mental anguish causing PTSD."

c. The Record of Proceedings detail the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 15 July 1991 and was honorably discharged on 23 February 1993 under the separation authority provided by paragraph 16-5b of AR 635-200, Personnel Separations – Enlisted Personnel (17 October 1990): The applicant requested a voluntary separation before the end of his term of service because of his perception that he would not be able to overcome a local bar to reenlistment. The separation code "KGF" denotes "Failure to meet minimum qualifications for Retention"; and the Reentry code of "3" denotes "Individuals who are not qualified for continued Army service, but the disqualification is waivable."

d. No medical documentation submitted with the application. Because of the period of service under consideration, there are no encounters in the EMR or documents in iPERMS.

e. Neither his separation packet nor documentation associated with his separation was submitted with the application.

f. There are no mental health encounters or diagnoses in JLV.

g. It is the opinion of the ARBA medical advisor that changes in his separation authority, code, or narrative reason for separation are all unwarranted.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Applicant asserts PTSD secondary to Military Sexual Trauma

(2) Did the condition exist or experience occur during military service? YES: Applicant asserts he was sexually harassed while in the Army

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: There was no probative evidence submitted, found in the EMR, other electronic records, or in JLV (to include VA endorsement), indicating the applicant has been diagnosed with PTSD or a behavioral health disorder of any kind.

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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that changes to the applicant's separation authority, code, or narrative reason for separation are all unwarranted.

2. The Board noted the applicant's record was void of any BH-related history for the applicant and he does not have a service-connected disability. Evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the DD Form 214. As such, the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. Furthermore, the Board determined there was insufficient evidence of an error or injustice which would warrant a change in the separation code. Based on this, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

█

█

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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at

the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active service. The SPD code of "KGF" was the correct code for Soldiers separating under AR 635-200, para 16-5b, HQDA imposed bar to reenlistment, or locally imposed bar to reenlistment.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth 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 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 16-5b (Voluntary Separation of Soldiers Denied Reenlistment) states Soldiers denied reenlistment may be voluntarily separated before ETS. Locally imposed bars to reenlistment (AR 601-280, chapter 6), Soldiers who perceive that they will be unable to overcome a locally imposed bar to reenlistment may request immediate separation. Commanders are authorized to deny or approve the request and order separation under this paragraph.

5. Army Regulation 601-280 (Total Army Retention Program) at the time governed bars to reenlistment. This regulation provided that a Soldier could be barred from reenlisting based on specific incidents of substandard performance and that any commander in the Soldier's chain of command may initiate a bar to reenlistment. Procedurally, the regulation required that a bar to reenlistment certificate be prepared and referred to the Soldier so he or she could submit a statement on his or her own behalf. Each member of the chain of command must have then endorsed the bar to reenlistment to the proper approval authority. The regulation required that the approval authority for a Soldier with less than 10 years' active Federal service at date of bar initiation must have been personally approved by the first commander in the rank of lieutenant colonel or above in the Soldier's chain of command, or the commander exercising Special Court Martial Convening Authority, whoever was in the most direct line to the Soldier (unless this was the same commander who initiated the action). The personal signature of the approving or disapproving authority was required. The regulation also provided that the Soldier could appeal the bar to reenlistment and that final approval of appeals would be at least one approval level higher than the original bar approval authority.

6. 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.

7. 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.

8. 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.

9. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

//NOTHING FOLLOWS//