

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002660

APPLICANT REQUESTS:

- Reconsideration of his previous for an upgrade from under other than honorable conditions to honorable
- As a new request:
  - 42 days of accrued leave pay
  - tour to Korea that was not indicated on his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- 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) (duplicate)

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 AR20220009777 on 11 May 2023.
2. The applicant states he is asking for his 42 days accrued leave pay that he was not paid. He served 5 years in the Army and left his love of the service because he was told that he did not have a case, at that time he was young and did not know what to do so he agreed to the discharge. His officer had him undress in front of him while the female clerk came into the room. There were no others in the room. He just looked at the applicant's body and smiled and to him to bend over for hm. He has two tours to Korea that was not indicated on his DD Form 214 (Certificate of Release or Discharge from Active Duty). This is wrong and someone needs to account for their actions.
3. The applicant's service record shows the following information:
  - a. DD Form 4 (Enlistment or Reenlistment Agreement-Armed Forces of the United States) reflects he enlisted in the Regular Army on 14 May 1979.

b. He reenlisted on 13 January 1982.

c. DA Form 2-1 (Personnel Qualification Record) shows in item 5 (Oversea Service) he served in Korea from 19 January 1983 to 14 January 1984 and item 35 (Record of Assignments) service in Korea from on or about 20 November 1979 to 13 December 1980.

d. Court-martial charges were preferred against the applicant on 25 October 1984. His DD Form 458 (Charge Sheet) shows he was charged with:

- wrongfully possessing 1 round of 5.56mm ball ammunition, military property of the United States on or about 19 July 1984
- stealing 1 M-16 20 round magazine of a value of about \$2.81, and 20 rounds of 5.56mm ball ammunition of a value of about \$4.80, of a combined total value of about \$7.61, military property of the United States at some time between 15 June 1984 and 30 June 1984

e. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) the applicant accepted nonjudicial punishment under Article 15 of the UCMJ on 13 November 1984 for without authority absenting himself from his unit on or about 4 August 1984 to 7 August 1984 and on or about 4 October 1984 until on or about 1300 hours. His punishment consisted of reduction to private first class/PFC and correctional custody for 7 days. He did not demand trial by court martial and it was a closed hearing. He elected to appeal and to provide an additional statement.

f. On 21 November 1984 appellate proceedings were conduct improperly. The appeal was evaluated, and the proceedings were conduct in accordance with law and regulations and the punishments are not unjust or disproportionate to the offenses committed and the appeal was denied.

g. The applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, for the good of the service, in lieu of trial by court-martial on 21 December 1984. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a

under other than honorable conditions discharge and furnished an Undesirable Discharge Certificate.

(2) He elected to submit statements in his own behalf. In his statement, the applicant indicated that he did not know what he would do in civilian life. He did not state why he wanted a discharge.

h. The applicant's his immediate commander recommended approval of the applicant's voluntary request for discharge with the issuance of a under other than honorable conditions discharge on 26 December 1984. His reasons for the recommendation were due to the seriousness of the offenses and the lack the applicant's rehabilitation potential. He believes discharge under AR 635-200; Chapter 10 is appropriate.

i. The Staff Judge Advocate (SJA) memorandum, 27 December 1984 shows in the SJA's opinion the applicant's past record is poor, is present attitude is poor, and his prospects for successful rehabilitation are not good. The commanders recommend approval with an issuance of an other than honorable conditions discharge.

j. The separation authority approved the discharge action on 27 December 1984 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant reduced to the lowest enlisted pay grade and be issued a under other than honorable conditions discharge.

k. He was discharged on 15 January 1985. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service with separation code JFS and reenlistment code 4. His service was characterized as under other than honorable conditions. He completed 5 years, 8 months, and 2 days of net active service. No loss time was listed. He was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge Rifle M-16

l. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. By regulation AR 635-200, Chapter 10 such discharges are voluntary requests for discharge in lieu of trial by court-martial.

4. The applicant does not provide any documentation to show he had 42 days of leave and that these days of accrued leave were erroneously lost during his period of military service. 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.

5. In a prior ABCMR Docket Number AR20220009777, boarded on 11 May 2023, the Board determined 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 applicant's records and denied his request for upgrade.

6. On 1 October 2024, a staff member at ARBA, requested the applicant to provide medical documents that support his other mental health issues. As of 1 November 2024, no response was provided.

7. On 2 October 2024, the Army Review Boards Agency requested a Redacted Criminal Investigation Division report. No response.

8. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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. 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.

#### 10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request for an upgrade from under other than honorable (UOTHC) conditions to honorable. On his DD Form 149, the applicant indicated Other Mental Health Issues and Sexual Assault/Harassment are related to his request. More specifically, he asserted he experienced Military Sexual Assault (MST) by his Officer. 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 Regular Army (RA) on 14 May 1979 and reenlisted on 13 January 1982, 2) court-martial charges were preferred against the applicant on 25 October 1984 for: wrongfully possessing 1 round of 5.56mm ball ammunition, military property of the United States and stealing 1 M-16 20 round magazine of a value of about \$2.81 and 20 rounds of 5.56mm ball ammunition of a value of about \$4.80. 3) he received an Article 15 on 13 November 1984 for absenting himself from his unit from 04-07 August 1984 and on 04 October 1984 until on or about 1300 hours. 5) the applicant was discharged on 15

January 1985 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service with a separation code of JFS and reenlistment code of 4.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV was void of medical information. The applicant is not service-connected through the VA for any conditions.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence that the applicant had one potentially mitigating condition or experience as he asserted he experienced MST in-service. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. Based on his experience of MST, this Advisor would contend that partial BH mitigation is supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no in-service or civilian medical records available for review and he provided no medical documentation supporting his assertion of Other Mental Health Issues or MST. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. As there is an association between avoidance behaviors and MST, there is a nexus between his absencing himself from his unit and his experience of MST. However, stealing and wrongful possession of military property are not part of the natural history and sequelae of MST as it does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right. As such, BH mitigation is supported for his misconduct of absencing himself from his unit.

Although there is insufficient evidence to support that his misconduct was related to Other Mental Health Issues, per Liberal Guidance, his assertion alone is worthy of 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 partial 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 evidence that the applicant had one potentially mitigating condition or experience as he asserted he experienced MST in-service. The opine noted partial mitigation finding a nexus between his absencing himself from his unit and his experience of MST

2. The Board noted, the applicant served in Korea from 19 January 1983 to 14 January 1984 and his oversea time was not annotated on his DD Form 214. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board agreed based on liberal consideration there is an association between avoidance behaviors and MST, which partially mitigates the applicant's misconduct. However, the Board determined there is insufficient evidence that would support the applicant's misconduct of stealing and wrongful possession of military property. The Board found that partial relief is warranted and determined correction to his record to show his oversea service in Korea as well as an upgrade to general, under honorable conditions is appropriate. Therefore, partial relief was granted.

BOARD VOT:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by

- re-issuing the applicant a DD Form 214 for the period ending 15 January 1985 to show his characterization of service as under honorable (general) conditions

adding

- Korean Defense Service Medal (KDSM)
- Oversea service ribbon

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to reconsideration of the applicant's previous for an upgrade from under other than honorable conditions to honorable.

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. 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.

2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

3. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for: Block 12f, (Foreign Service), reflects an entry of the total amount of foreign service completed during the period by the DD Form 214.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from



Active Duty). The separation code JFS (is to be used for RA Soldiers discharged for the good of the service).

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the separation code JFS has a corresponding RE Code of "3."

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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.

8. 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 to 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.

9. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

10. Title 10, U.S. Code, section 1556 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//