

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240003068

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to a general discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Two Character Reference Letters
- Bachelor of Science Degree

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 forced out the Army because of his mental health and sexual harassment. The pressure was too much for a young Army man to handle. He was accused of doing something he did not do. He saw a way of getting out of the Army and took the opportunity to leave the service. He really wanted to make the Army a career, but he never had the opportunity. He really did not know what to do or even if his request could be considered. He wanted to request an upgrade for many years. However, he was just unsure if it was possible. He is requesting this relief to be an upgrade to a general discharge.
3. The applicant provides the following documents:
 - a. Two Character Reference Letters, which discusses his character and ability to demonstrate high levels of management skills.
 - b. A copy of his Bachelor of Science degree, completed on 8 May 1993.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 3 February 1992.

b. On 1 February 1995, court-martial charges were preferred on the applicant for the following specifications:

- making a false statement
- loss of government printer

c. After consulting with legal counsel, he requested a discharge in lieu of trial by courts-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

d. On 15 February 1995, a statement of charges was given to the applicant for loss and neglect of a government printer.

e. On 16 February 1995, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 7 March 1995, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 1 months, and 5 days of net active service with no lost time. The narrative reason for separation listed as "In Lieu of Trial by Court-Martial." It also shows he was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon

- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Pistol Bar

5. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

6. 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/or 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 an upgrade of his 7 March 1995 discharge characterized as under other than honorable conditions. He has indicated on his DD 149 that Other Mental Health Conditions and Sexual Assault/Harassment are issues related to his request. He states:

“I was forced out the Army because of my Mental Health and sexual harassment. The pressure was too much for a young army man to handle. I was accused of doing something I did not do. I saw a way of getting out of the Army and took the opportunity to leave the service. I really wanted to make the Army a career but, I never had the opportunities.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the Regular Army on 3 February 1992 and was discharged under other than honorable conditions on 7 March 1995 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Discharge for the Good of the Service. It shows no periods of Service in a hazardous duty or imminent danger pay area.

d. A 30 January 1995 Charge Sheet (DD form 458) shows the applicant was charged with making a false official statement in violation of Article 107 of the UCMJ; “willfully

suffer a Hewlett Packard PH4 Laserjet printer, of a value of about \$500, military property of the United States, to be lost” in violation of Article 108 of the UCMJ - Military property of the United States - Sale, loss, damage, destruction, or wrongful disposition; and stealing said printer in violation of Article 121 of the UCMJ – Larceny and wrongful appropriation.

e. On 14 February 1995, the applicant voluntarily requested discharge for the good of the service under provisions in chapter 10 of AR 635-200. The Commanding General of the 24 Infantry Division (Mechanized) and Fort Stewart approved his request on 18 February 1995 with the direction that he discharged under other than honorable conditions and be reduced in rank to Private E-1.

f. No medical documentation was submitted with the application and his period of service predates the EMR.

g. The has yet to receive care at a Veterans Hospital Administration (VHA) facility and has no diagnoses on his medical problem list.

h. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violations and thereby warrant consideration of an upgrade under liberal consideration guidelines.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has a mental health condition and was subjected to sexual harassment.

(2) Did the condition exist or experience occur during military service? Applicant asserts the mental health condition was related to and the sexual harassment occurred during his service.

(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 or to validate the applicant’s assertion of sexual harassment.

j. If the applicant were to have a mitigating mental health condition, it would not mitigate his misconduct: It would not have negatively affected his ability to differentiate right from wrong and adhere to the right and therefor would not mitigate the multiple

UCMJ violations which led to his voluntary request for separation in lieu of trial by court marital.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the three years of honorable service completed prior to any misconduct in the record, the misconduct involved, and the post-service character evidence provided by the applicant, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to Honorable.

BOARD VOTE:

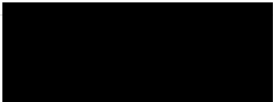
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change


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CHAIRPERSON

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. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

3. Section 1556 of Title 10, United States Code, 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.

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 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on equity, injustice, or clemency grounds, BCM/NRs 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//