

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240003316

APPLICANT REQUESTS: in effect, upgrade his general, under honorable conditions to honorable, citing post-traumatic stress disorder (PTSD) and military sexual trauma military sexual trauma (MST) as contributing factors.

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, due to military MST he felt he was no longer fit to be a soldier or a man.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 14 February 1979.
 - b. The applicant accepted nonjudicial punishment for the following:
 - 20 September 1979-Leaving sentinel duty and sleeping on duty (2 specifications)
 - 16 November 1979-Failure to obey lawful order
 - 6 December 1979 - Failure to obey lawful order and failure to repair
 - c. On 12 December 1979, the immediate commander notified the chain of command of the applicant's unsuccessful completion of the Individual Effectiveness Course (IEC) and the recommendation by the program/Cadre for elimination from the service. A detail

resume of the applicant's attitude, conduct, performance, and discreditable acts were provided by the immediate commander.

d. The service record is void details and circumstance of the IEC program.

e. The applicant accepted nonjudicial punishment on and for the following:

- 2 June 1980 - Destruction of government property
- 19 August 1980 - Failure to repair

f. On 26 August 1980, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for misconduct. He acknowledged the same day.

g. After consult with legal counsel, he acknowledged:

- his case would be presented before a board of officers
- he can submit a statement on his own behalf
- he can be represented by counsel at any hearing

h. The immediate commander-initiated separation action against the applicant for patterns of misconduct. The specific reasons for his proposed recommendation were based upon his failure of the IEC program and his receipt of two (2) Article 15's while in the program. He was dismissed from the IEC and discharge was recommended from the program. The intermediate commander recommended approval.

i. On 16 October 1980, the separating authority directed a board of officers to convene to determine whether the individual should be separated for misconduct.

j. The board convened at Fort Riley, Kansas on 6 November 1980. The board recommendations were the applicant be discharged from the military service for patterns of misconduct involving frequent incidents of discreditable nature with military authorities. Further recommend that your discharge be characterized as General.

k. Consistent with the board findings and recommendation, the separation authority approved the discharge recommendation for separation under the provisions of Chapter 14, AR 635-200, paragraph 14-34b. He would be issued a general, under honorable conditions discharge.

l. Orders 233-3, dated 4 December 1980, discharged the applicant from active duty with an effective date of 8 December 1980.

m. On 8 December 1980, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 9 months, and 25 days of active service. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct-frequent incidents of a discreditable nature with civil or military authorities." It also shows he was awarded or authorized the:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade

4. On 17 August 1993, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. Department of the Army, Criminal Investigation Division (DACID) conducted a search of the Army criminal file indexes, regarding the applicant and revealed no CID/ military police (MP)/ or military sexual trauma (MST) records were on file pertaining to the applicant.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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 applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he experienced military sexual trauma (MST) and resultant 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 Regular Army on 14 February 1979; 2) The applicant accepted nonjudicial punishment on three occasions between September-December 1979 for minor misconduct. On 12 December 1979, the immediate commander notified the chain of command of the applicant's unsuccessful completion of the Individual Effectiveness Course (IEC). The applicant accepted nonjudicial punishment again between June and August 1980 for destruction of government property and failure to repair; 3) The applicant was discharged on 8 December 1980. He was discharged from active duty with a general, under honorable

conditions characterization of service. The narrative reason for separation was listed as "Misconduct-frequent incidents of a discreditable nature with civil or military authorities.

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

c. The applicant asserts he was experienced MST and resultant PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported MST or any resultant mental health condition while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2000. He has been provided assistance for homelessness and severe psychiatric conditions along with PTSD and substance dependence. In 2015, he reported to the VA that he experienced MST while on active service. He has consistently reported MST to the VA, and he has been diagnosed with PTSD as a result of this experience. He currently does not receive any service-connected disability for a mental health condition, including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported experiencing MST and resultant PTSD during his active service. He was diagnosed with service-connected PTSD as a result of the applicant's report of MST by the VA in 2015.

(2) Did the condition exist or experience occur during military service? Yes, the applicant noted experiencing MST and resultant PTSD during his active service. He was diagnosed with service-connected PTSD as a result of the applicant's report of MST by the VA in 2015.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, the applicant has been diagnosed with service-connected PTSD as a result of the applicant's report of MST to the VA in 2015. The applicant did engage in various types of misconduct, which could be erratic behavior and a natural sequelae to MST and PTSD. Per Liberal Consideration, the applicant's diagnosis of service-connected PTSD as a result of MST is a mitigatable mental health condition and experience.

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 misconduct leading to the applicant's separation, the findings and recommendations of the medical advisor, and the information provided by the applicant, the Board concluded there was sufficient evidence of an error or injustice warranting an upgrade to the applicant's characterization of service to reflect Honorable, and changing the separation authority, separation code and narrative reason for separation to Secretarial Authority.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	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: AR 635-200
- Separation Code: JFF
- Reentry Code: No change
- Narrative Reason for Separation: Secretarial Authority



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 635-200 (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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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.

4. 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.

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 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.

6. 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.

//NOTHING FOLLOWS//