

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003909

APPLICANT REQUESTS: an upgrade of his under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (DVA) letter
- VA Medical records (150 pages)

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 is requesting that his discharge be changed to honorable. They raped him and took his Army career from him. The correction should be changed because he was raped and when he went to his chain of command, he was told to be quiet and keep it in the wolf pack family. He did not, so they started disciplining him with extra duty and often embarrassed in front of the whole company. He was told to go on vacation and do not come back cause things were going to get ugly. He was just able to come forward and apply for disability benefits. He was ashamed of what happened to him. He was raped and nothing was done about it. It was covered up by multiple people. He deserves to be given an honorable discharge. He was diagnosed with post-traumatic stress disorder.
3. The applicant enlisted in the Regular Army on 11 April 1986. He served in Korea from 29 September 1986 to 25 September 1987.
4. DA Form 4187 (Personnel Action) shows his duty status was changed several times:
 - from present for duty (PDY) to absent without leave (AWOL) on 1 February 1988
 - from AWOL to control of military authority (CMA) on 19 February 1988, when he voluntarily returned to military control at Pine Bluff Arsenal, AR

- from CMA to in-transit on 21 February 1988, he was scheduled to depart for Kansas City aboard Eastern Flight 3589
- from transit to AWOL on 21 February 1988, when he failed to board connecting flight from Kansas City, MO to Manhattan, KS
- from AWOL to PDY on 26 February 1988, when he voluntarily returned to military control at Headquarters, 1-1 Aviation Regiment, Fort Riley, KS

5. He received non-judicial punishment on 2 March 1988, for on or about 1 February 1988, without authority, absent himself from his unit, and did remain so absent until on or about 19 February 1988 and from on or about 21 February 1988 until on or about 26 February 1988. He was reduced to private/E-1.

6. On 12 January 1989, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12b for failure to repair, AWOL, bad checks, and failure to obey a lawful order.

7. On 12 January 1989, having been advised by consulting counsel of the basis for the contemplated action to separate him for misconduct under AR 635-200, chapter 14, paragraph 14-12b, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He waived his rights. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him.

8. On 12 January 1989, his chain of command recommended that he be separated from the Army prior to the expiration of his current term of service and that he receives a General Discharge Certificate.

9. On 20 January 1989, the separation authority approved separation under the provisions of AR 635-200, paragraph 14-12b and directed his service be characterized as under honorable conditions.

10. Accordingly, on 27 January 1989, he was discharged under honorable conditions. His DD Form 214 shows he completed 2 years, 8 months, and 24 days net active service this period. It also shows:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12b
- Item 26 (Separation Code): JKM
- Item 27 (Reenlistment Code): RE-3 RE-3B
- Item 28 (Narrative Reason for Separation): Misconduct – pattern of misconduct
- Item 29 (Dates of Time Lost During this Period): 880201-880218 and 880221 - 880225

11. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) within the ADRB's 15-years statute of limitations.

12. During the processing of this case a request was made for sanitized copies of Law Enforcement Reports from Department of the Army, Criminal Investigation Division (DACID). On 1 October 2024, a response was received by DACID which shows a search of the Army criminal file indexes, utilizing the information provided, revealed no Sexual Assault and Domestic Violence records pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

13. The applicant provides a DVA letter and 150 pages of VA medical records in support of his claim.

14. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions discharge. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) and Military Sexual Trauma (MST) are related to his request. 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 11 April 1986 and served in Korea from 29 September 1986 to 25 September 1987, 2) he received nonjudicial punishment (NJP) on 02 March 1988 for absenting himself from his unit from 01 February until 19 February 1988 and from 19 February until 21 February 1988, 3) On 12 January 1989, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 chapter 14, paragraph 14-12b for failure to repair, AWOL, bad checks, and failure to obey a lawful order. He was discharged accordingly on 27 January 1989, 4) On 1 October 2024, DACID indicated a search of the Army criminal file indexes revealed no Sexual Assault or Domestic Violence records pertaining to the applicant.

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) and Veterans Benefits Management System (VBMS) 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 shows the applicant is 60% service-connected through the VA for several medical conditions, none of which are BH-related. The applicant underwent a Compensation and Pension (C&P) examination on 21 December 2022. At the time of the evaluation, the provider noted he met criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood. He reported a history of MST, to which the provider noted a discrepancy in reporting the year, 1986 on paperwork and 1988 during the interview, and seeing Koreans murdered while stationed in South Korea. The provider marked 'no' to the question 'Does the Veteran's claim file support the contention that an assault/personal trauma occurred?' Subsequent to his C&P examination, he was evaluated through the VA for MST on 10 July 2023, to which the provider noted he screened positive and occurred while he was stationed at Camp Casey in South Korea. As a result of the MST, the applicant reported experiencing intrusive thoughts, nightmares, attempts to avoid thinking about the trauma, avoidance of crowded places and public restrooms, hypervigilance, exaggerated startle response, problems with physical and emotional intimacy, and problems trusting others. The provider documented that he reported the assault to his First Sergeant, and, as a result, he was put on extra duty, was encouraged to get out of the military, and stated that he was told by Sergeant's that he needed to kill himself. On 29 August 2023 during a comprehensive intake, he was diagnosed with PTSD, Unspecified and Major Depressive Disorder, Recurrent, Unspecified. He was referred to the VA PTSD Program on 19 October 2023 and started a Cognitive Processing Therapy (CPT) (an evidence-based treatment for PTSD) group on 22 November 2023, with the index trauma identified as MST. Records show he started a second evidence-based treatment protocol for PTSD in 2024. He was also trialed on Trazodone (sleep) and Prazosin (nightmares), which he discontinued as he did not like those medications. He was also trialed on Sertraline (antidepressant) for mood and trauma symptoms.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a potentially mitigating condition or experience in-service, MST. There were no in-service medical records available for review. Post-discharge, the applicant's VA treatment records show he reported a history of MST in-service and has been diagnosed with PTSD through the VA with the index trauma identified as MST. Furthermore, the applicant has undergone two evidence-

based treatment protocols for PTSD through the VA and trialed on several medications to address sleep (Trazodone), nightmares (Prazosin), and mood/trauma symptoms (Sertraline). This Advisor would contend that his misconduct is partially mitigated based on his experience of MST and diagnosis of PTSD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported a history of MST and was diagnosed with PTSD due to MST through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST and was diagnosed with PTSD due to MST through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no in-service medical records for review. Post-discharge, the applicant reported a history of MST to his VA providers and was clinically diagnosed with PTSD due to 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 MST/PTSD, avoidance behaviors, difficulty with authority figures, and decreased performance, there is a nexus between his experience of MST/diagnosis of PTSD and his misconduct of failure to repair, AWOL, and failure to obey a lawful order. However, writing bad checks is not part of the natural history and sequelae associated with MST/PTSD as these experiences/conditions do not interfere with the ability to distinguish between right and wrong and adhere to the right. As such, BH mitigation is partially supported for his misconduct of failure to repair, AWOL, and failure to obey a lawful order.

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. One potential outcome was to grant relief based on the advising official finding sufficient evidence that the applicant had a potentially mitigating condition or experience in-service, MST. Upon further review of the applicant's request, available military records and the medical review, the Board considered the advising official finding a nexus between his

experience of MST/diagnosis of PTSD and his misconduct of failure to repair, AWOL, and failure to obey a lawful order.

2. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of writing bad checks and going AWOL. The Board found the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant's misconduct is not part of the natural history and sequelae associated with MST/PTSD as these experiences/conditions do not interfere with the ability to distinguish between right and wrong and adhere to the right. Therefore, 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.

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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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a

Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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 sexual assault or sexual harassment was unreported, or 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

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//