

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003977

APPLICANT REQUESTS:

- reconsideration of his previous request in effect, to upgrade his under other than honorable conditions (UOTHC) discharge to a general discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty), period ending 5 August 1991
- Medical Records
- Letter, Medical Doctor K\_\_\_\_ S\_\_\_\_, 30 December 2022
- Character letter, D\_\_\_\_ W\_\_\_\_, 30 June 2023

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 AR20100028680 on 17 May 2011.

2. The applicant states in effect:

a. He was sexually harassed by his platoon sergeant. His platoon sergeant made comments, provocative looks, and brushed up against him. Other members made comments about his sexuality which exacerbated his anxiety and mental distress. He did not believe that anyone would believe him. The stress caused paranoia, he was hearing voices, it became overbearing, and he left.

b. He grew up on a farm with his father and uncles and never experienced anything like he did in the Army. His father was an Army Veteran, and he wanted to make him proud. The recent passing of his father triggered him to be hospitalized and open up

about the events of the past. His father's disappointment, and these events have been a mental burden. He has been living with social anxiety and paranoia for years. He was hospitalized and diagnosed with schizophrenia. The applicant marked post-traumatic stress disorder (PTSD), other mental health, and sexual harassment on his DD Form 149 as conditions related to his request.

3. The applicant provides:

- a. His medical records for post service treatment in October 2022.
- b. A letter, issued by K\_\_\_\_ S\_\_\_\_, Medical Doctor, 30 December 2022, shows the applicant was assessed with bipolar disorder, depressed, moderate, and the provided treatment plan.
- c. A character letter issued by his spouse, 30 June 2023, which shows in part the applicant has opened up to her about the sexual harassment he endured while stationed in North Carolina. She has always noticed paranoia and excessive drinking. He disclosed to her that they thought he was gay, he is guarded about the details and becomes emotional about the past.

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

- a. On 11 June 1985 he enlisted in the U.S. Army Reserve.
- b. On 4 June 1986 he entered active duty for training (ADT). He was honorably released from ADT on 14 August 1986. His DD Form 214 shows he completed 2 months and 11 days of active service.
- c. The DA Form 2-1 (Personnel Qualification Record), item 21 (Time Lost) shows the applicant was absent without leave (AWOL) from 26 June 1990 to 26 June 1991.
- d. A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant for one specification of being absent without leave (AWOL) from on or about 26 June 1990, until on or about 25 June 1991.
- e. On 8 July 1991, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:
  - he was making the request of his own free will
  - maximum punishment
  - he was guilty of at least one or more 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 conditions other than honorable
- 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 must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

f. On 15 July 1991, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

g. On 5 August 1991, he was discharged from active duty with an UOTHC characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 11 days of active service with 365 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon,
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Parachutist Badge

5. On 17 May 2011, the ABCMR rendered a decision in Docket Number AR20100027680. The Board noted the applicant submitted neither probative evidence nor a convincing argument in support of his request. The Board determined that the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of his records of the individual concerned.

6. 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.

7. 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.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct 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 or in lieu of trial by court-martial.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request of an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected PTSD, OMH and MST/harassment on his application as related to his request.

b. 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:

- The applicant enlisted in the U.S. Army Reserve on 11 June 1985.
- On 4 June 1986 he entered active duty for training (ADT). He was honorably released from ADT on 14 August 1986. His DD Form 214 shows he completed 2 months and 11 days of active service.
- A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant for one specification of being absent without leave (AWOL) from on or about 26 June 1990, until on or about 25 June 1991.
- On 8 July 1991, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- On 5 August 1991, he was discharged from active duty with an UOTHC characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 11 days of active service with 365 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service," with reentry code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he was sexually harassed by his platoon sergeant. His platoon sergeant made comments, provocative looks, and brushed up against him. Other members made comments about his sexuality which exacerbated his anxiety and mental distress. He did not believe that anyone would believe him. The stress caused paranoia, he was hearing voices, it became overbearing, and he left. He grew up on a farm with his father and uncles and never experienced anything like he did in the Army. His father was an Army Veteran, and he wanted to make him proud. The recent passing of his father triggered him to be hospitalized and open up about the events of the past.

His father's disappointment, and these events have been a mental burden. He has been living with social anxiety and paranoia for years. He was hospitalized and diagnosed with schizophrenia." The applicant further provides a letter from his spouse, dated 30 June 2023, supporting his assertion of sexual harassment while in-service and the impact this had on the applicant.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. The electronic medical record shows on 4 October 2022 the applicant presented to the VA outpatient mental health clinic as a walk-in reporting he needed assistance because he was hearing voices. The applicant was taken to the emergency room due to both suicidal and homicidal ideations along with auditory hallucinations. He reported having homicidal ideations due to hearing command hallucinations telling him to hurt people. The applicant was involuntarily psychiatrically admitted into the hospital on 6 October 2022 and discharged on 13 October 2022. His discharge diagnosis was Schizoaffective Disorder and Bipolar Disorder. The applicant continued to receive follow-up psychiatric care via the VA following his discharge from the hospital. He was initially flagged as being at high risk for suicide but with continued care the high-risk flag was removed. The applicant currently participates in a multi-specialty program via the VA that provides holistic care.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that based on the applicant's assertion of MST, there is sufficient evidence to support the applicant had an experience of MST that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST. He further selected PTSD and OMH as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST while in military service. He further described "hearing voices" while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to one specification of being AWOL. He asserts the mitigating experience of MST. As there is an association between MST and avoidant

behavior, there is a nexus between the applicant's experience of MST and his misconduct of going AWOL. In addition, he described "hearing voices" while in service and provides medical documentation of being hospitalized and diagnosed with Schizoaffective Disorder and Bipolar Disorder later in life. Given his psychiatric history and description of hearing voices, it is likely the applicant was experiencing prodromal or early symptoms of his disorder while in military service, which would also provide mitigation of his misconduct.

#### 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. Upon review of the applicant's petition, available military records and the medical review, the Board noted the advising official finding sufficient evidence to support the applicant had an experience of MST that mitigates his misconduct.
2. The Board notwithstanding the advising official opine, determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for a year. The Board noted the applicant's unit was pending deployment Saudi Arabia as the applicant went AWOL and he returned after his unit redeployed. The applicant provided no post service achievements for the Board to consider clemency. The Board recognized the applicant's letter of support under liberal consideration. However, the Board found the applicant did not demonstrate by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Furthermore, the Board agreed of the applicant completed 1 year, 2 months, and 11 days of active service of which 365 days he was AWOL. The Board found relief is not warranted and 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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20100028680 on 17 May 2011.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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.

4. 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.



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.

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//