

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240004192

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 AR20130004260 on 24 October 2013.
2. The applicant states he wants his status updated to an honorable discharge. He wants to receive all his benefits that are due to him. He has lived with silence and embarrassment for over 30 years and mental instability.
 - a. He served his country with honor at wartime. His career was stolen from him by his sergeant who sexually assaulted him and when he needed to just talk to a family member, he gave him access to call home and him being young and dumb trusted his superior. The sergeant gave him access to call home from an account he stole from their commander who he never sat down in the office with. Only he had access as a staff sergeant could get that close to do something so wrong. He had to pay back for something he had no clue about. Yet this same sergeant made him feel awful because of his sexuality he still lives with.
 - b. While in Saudi he was out one night repairing a radio, and on the way back to camp he made him get out the truck and told him to walk back. He cursed at him and when he walked away, he pushed him against the truck, put a knife against his neck, made him drop his pants and called him names. One night while on guard duty, the private first class he would hang with pointed his rifle at him and called him names just as the sergeant.

3. The applicant enlisted in the Regular Army on 7 June 1989, and he held military occupational specialty 31V (Unit Level Communications Maintainer). He served in Southwest Asia from 10 September 1990 to 11 April 1991.
4. On 30 May 1991, his command preferred court-martial charges against him for 11 specifications of falsely pretending to American Telephone and Telegraph (AT&T) Company that he was authorized to use an AT&T calling card number, belonging to Captain [REDACTED] then knowing that the pretenses were false, and wrongfully obtaining services from AT&T.
5. His chain of command recommended trial by a general court-martial empowered to adjudge a bad conduct or a dishonorable discharge.
6. On 24 June 1991, the applicant consulted with legal counsel and he was advised of the basis for the contemplated trial by court-martial for an offense punishable under the Uniform Code of Military Justice (UCMJ) that authorized the imposition of a bad conduct or a dishonorable discharge, the possible effects of a discharge under other than honorable conditions if his request for discharge in lieu of trial by court-martial were approved, and of the procedures and rights available to him. Following consultation with legal counsel, he requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he indicated:
 - he was making this request of his own free will and he had not been subjected to any coercion whatsoever by any person
 - he understood that by requesting discharge he was admitting guilt to the charges against him or of a lesser-included offense that also authorized the imposition of a bad conduct discharge or a dishonorable discharge
 - he acknowledged he understood if his discharge request were approved he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs
 - he acknowledged he understood he could be deprived of his rights and benefits as a veteran under both Federal and State laws
 - he stated that under no circumstances did he desire further rehabilitation and he had no desire to perform further military service
7. He submitted a personal statement in connection with his voluntary request for separation. He contended he should receive a general discharge in view of his past service and the circumstances surrounding the incident. He acknowledged what he did was wrong and promised he would make restitution and overcome this incident.

8. On 25 June 1991, his immediate and intermediate commanders recommended approval of his request for discharge with the issuance of an under other than honorable conditions discharge.

9. On 26 June 1991, consistent with the chain of command recommendations and subsequent to a legal review for legal sufficiency, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and directed the issuance of an under other than honorable conditions discharge and reduction to the rank/grade of private (PV1)/E-1.

10. On 1 July 1991, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged for the good of the service - in lieu of trial by court-martial with a characterization of service of under other than honorable conditions. This form shows he completed 2 years and 25 days of creditable active service. It further shows he was awarded or authorized the:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade Bar
- Army Lapel Button
- National Defense Service Medal
- Southwest Asia Service Medal with two bronze service stars

11. During the processing of this case a request was made to Department of the Army, Criminal Investigation Division, for sanitized copies of Law Enforcement Reports. A search of the Army criminal file indexes utilizing the information provided revealed no Sexual Assault records pertaining to the applicant.

12. The ABCMR considered the applicant's request to upgrade his discharge in ABCMR Docket Number AR20130004260, on 24 October 2013. The Board stated the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's record and denied his request.

13. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

14. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an

honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

15. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. The applicant selected PTSD, OMH, Sexual Assault/Harassment, and Reprisal/Whistleblower 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 into the Regular Army on 7 June 1989.
- On 30 May 1991, his command preferred court-martial charges against him for 11 specifications of falsely pretending to American Telephone and Telegraph (AT&T) Company that he was authorized to use an AT&T calling card number, belonging to Captain █, then knowing that the pretenses were false, and wrongfully obtaining services from AT&T.
- On 24 June 1991, the applicant consulted with legal counsel and he was advised of the basis for the contemplated trial by court-martial for an offense punishable under the Uniform Code of Military Justice (UCMJ) that authorized the imposition of a bad conduct or a dishonorable discharge, the possible effects of a discharge under other than honorable conditions if his request for discharge in lieu of trial by court-martial were approved, and of the procedures and rights available to him. Following consultation with legal counsel, he requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service – in lieu of trial by court-martial.
- On 1 July 1991, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged for the good of the service - in lieu of trial by court-martial with a characterization of service of under other than honorable conditions.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he wants his status updated to an honorable discharge. He wants to receive all his benefits that are due to him. He has lived with silence and embarrassment for over 30 years and mental instability. He served his

country with honor at wartime. His career was stolen from him by his sergeant who sexually assaulted him and when he needed to just talk to a family member, he gave him access to call home and him being young and dumb trusted his superior. The sergeant gave him access to call home from an account he stole from their commander who he never sat down in the office with. Only he had access as a staff sergeant could get that close to do something so wrong. He had to pay back for something he had no clue about. Yet this same sergeant made him feel awful because of his sexuality he still lives with. While in Saudi he was out one night repairing a radio, and on the way back to camp he made him get out the truck and told him to walk back. He cursed at him and when he walked away, he pushed him against the truck, put a knife against his neck, made him drop his pants and called him names. One night while on guard duty, the private first class he would hang with pointed his rifle at him and called him names just as the sergeant."

d. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted a statement with his request for discharge for the good of the service – in lieu of trial by court-martial. In his statement he requested a general discharge in view of his past service and the circumstances surrounding the incident. He acknowledged what he did was wrong, and he had paid restitution. He further reported he had never been in trouble prior to his current charges. However, before his deployment he found out his girlfriend was pregnant, and he was concerned and anxious to talk to her and his family. His squad leader told him he had a number the applicant could use to call home, and he did not consider he could be doing something illegal.

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, and he has not received any treatment via the VA.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that 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 and selected PTSD, OMH, and Reprisal/Whistleblower on his application as related to his request. However, he provides no medical documentation in support of his contentions.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing MST while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to 11 specifications of falsely pretending he was authorized to use a calling card number, belonging to someone else, and wrongfully obtaining services. He asserts the mitigating experience of MST. As there is an association between MST and seeking to soothe by connecting with trusted loved ones, the applicant's misconduct of using an unauthorized calling card number to repeatedly call home while deployed is mitigated by his experience of MST.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record and Department of Defense guidance for consideration of discharge upgrade requests, the Board majority found that partial relief was warranted.
2. The Board carefully considered the applicant's statement and contentions, his record of service to include deployment to SWA, the frequency and nature of his misconduct, his statement that he paid restitution, his request for discharge, the reason for his separation and the character of service he received upon discharge. The Board considered his assertion regarding sexual assault, his checking PTSD and OMH on his application and the review and conclusions of the medical advising official. After reviewing the evidence, the Board found: (1) the applicant asserts experiencing MST and PTSD as related to his request. However, he provides no medical documentation in support of his contentions; (2) the applicant reports experiencing MST while in military service; (3) that the applicant's misconduct of using an unauthorized calling card number to repeatedly call home while deployed is mitigated by his experience of MST. The applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of a clemency determination.
3. Based on a preponderance of evidence, the Board majority determined that a partial upgrade of his discharge was warranted as a matter of liberal consideration; the Board minority recommended full relief of his request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|------|----------|------|----------------------|
| : | ████████ | : | GRANT FULL RELIEF |
| ████ | : | ████ | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board majority determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 1 July 1991, to show item 24 (Character of Service): Under Honorable Conditions, General.
2. The Board further determined that 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 upgrading his characterization of service to Honorable.

6/11/2025

X

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

- 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.
- d. Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

- a. 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.

4. 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//