

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240004736

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

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant affidavit
- Two (2) character letters
- Prescription details and photos
- Department of Veterans Affairs (VA) Summary of Benefits letter
- Department of Veterans Affairs Decision letter
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty)

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, via affidavit:

a. His childhood was largely positive, growing up as a military dependent. This upbringing exposed him to diverse cultures and allowed him to forge lasting friendships, shaping him into a well-rounded kid and teenager. He looks back on his youth fondly and would happily relive those years. He enlisted in the armed forces with aspirations to follow in his father's footsteps.

b. He excelled as a young Soldier; however, from 18 May 1988 to 7 July 1988, he was sexually assaulted by another soldier multiple times over the course of 21 days and has continued to suffer from PTSD and depression ever since. Despite reporting these incidents to Drill Sergeants (DS) B. and R., the trauma continued.

c. At his first and second duty stations, he mastered physical fitness tests and advanced his military and civilian education. He was promoted to sergeant (SGT)/E-5 just two years after enlisting. Although he took part in the Soldier of the Quarter and Soldier of the Year boards, he endured ongoing struggles with depression and PTSD throughout his Army career.

d. He regrettably fell into a negative influence at work, specifically from his supervisor, SGT W.P.L., and coworker Specialist (SPC) R.J., which led him to order office supplies without authorization. He fully cooperated in the CID investigation, which ultimately resulted in him receiving an Other Than Honorable Conditions discharge in lieu of court martial—a devastating end to his military career. He regrets his involvement in ordering those supplies and understands that his ongoing PTSD and depression were partly to blame for his poor decision-making.

e. His sudden transition from the Army was difficult and filled with sorrow for his actions and discharge. After two months of job searching, he found a position as an Evening Shift Supervisor at Sterile Recoveries Inc., where he worked for seven years. His discharge negatively impacted his marriage and strained his relationship with his parents, ultimately leading to divorce and ongoing tension with his father.

f. Since leaving the Army, his employment history has been strong. He has been with the federal government for 21 years and holds a Top-Secret clearance. He has a 25-year-old daughter who aspires to enlist in the Army, but he struggles with sharing his own discharge story with her. He encourages her to pursue an education and aim to become an officer. He actively volunteers at a church.

g. He maintains a clean record, without misdemeanors or felonies, and hopes to retire honorably from federal service in ten years and volunteer at his church, while also mentoring younger generations by assisting them with resumes and financial literacy.

h. He coped with the pain of his discharge, failures, and family issues by abusing alcohol, but he has abstained since 2001. He has also sought treatment at a counseling clinic and sees a mental health counselor at the VA. He often reflects on his time in the Army, acknowledging both its positive influence on his growth and the deep regrets he holds regarding his actions and their consequences. His failure to report the wrongdoing regarding the office supplies haunts him, and he frequently apologizes to his former wife and parents, despite his father's reluctance to discuss the matter. The stigma of his less-than-honorable discharge continues to weigh heavily on him, as he listens to fellow veterans speak fondly of their service.

i. Being older and wiser, an upgrade to an honorable discharge would mean everything to him. It would restore his self-confidence, bring pride to his family, and demonstrate that he has absorbed the lessons of his past mistakes. He would view an

honorable discharge as the completion of his dedication and hard work over the past 21 years within the federal government. He hopes the board will consider his request for a character discharge upgrade, both for himself and for the sake of his parents.

3. The applicant provides:

a. Character letter, written by Ms. J.L., states the applicant is an individual of strong moral character, and she has been fortunate to call him a friend for the past 10 years. She assures the Board that, despite the challenges he has faced in the Army, both she and many of his friends are confident in his integrity and kind heart. The applicant has shared with her the mistakes he made during his time in the Army, and she believes he genuinely regrets his past actions. She is convinced that he is committed to making amends and addressing any financial and emotional harm his decisions may have caused to those around him.

b. Character letter, written by Mr. W.R., states since 2017, he has had the opportunity to meet and get to know the applicant well. He describes the applicant as a wonderful individual and an outstanding friend. From the very beginning of their acquaintance, the applicant has consistently demonstrated a generous, kind, and devoted character towards others. The applicant is a person of great integrity who makes a continuous effort to act appropriately in all situations. Colleagues and friends recognize him for his strong sense of duty, which he consistently extends to his community, family, and everyone he encounters.

c. Prescription (Amitriptyline) details and photos (3 pages)

d. Department of Veterans Affairs (VA) Summary of Benefits letter, dated 13 March 2024, reflects the applicant's combined service-connected evaluation of 10 percent.

e. Department of Veterans Affairs Rating Decision letter, dated 15 February 2024, reflects the applicant was granted a service-connected evaluation of 10 percent for tinnitus.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was relieved from active duty for training and transferred back the 18th Field Hospital, Norfolk, VA on 1 September 1988, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 16-9a, Reserve Component personnel upon completion of MOS training, separation code MCD, and a character of service of honorable. He served 3 months and 14 days of net active service this period. Item 2 (Department, Component, and Branch) indicates he was Army/U.S. Army Reserve.

g. DD Form 214 reflects the applicant was discharged on 10 June 1993, under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial with a character of service as under other than honorable conditions. He completed 4 years, 3 months, and 2 days of net active service this period; 3 months and 14 days of total prior active service; and, 11 months and 8 days of total prior inactive service of 11 months and 8 days. It also shows the following:

Item 4a (Grade, Rate or Rank): PVT

Item 4b (Pay Grade): E1

Item 12h (Effective Date of Pay Grade): 20 May 1993

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

a. The applicant's complete military records are not available to the Board for review. A complete and thorough search for his military records was conducted; however, they could not be located. This case is being considered based on the documents provided by the applicant.

b. As previously stated in paragraph 3g, the applicant was discharged on 10 June 1993, under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial, and a character of service as under other than honorable conditions. He completed 4 years, 3 months, and 2 days of net active service this period.

5. U.S. Army Criminal Investigation Command memorandum, dated 14 November 2024, Subject: Request for Redacted CID and Military Police Reports Pertaining to Sexual Assault pertaining to the applicant states, a search of the Army criminal file indexes, utilizing the information you provided, revealed no Sexual Assault investigation 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.

6. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

7. By regulation, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge 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. A discharge under other than honorable conditions is normally considered appropriate.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment are related to his request. More specifically, the applicant stated he suffered from PTSD and Depression due to Military Sexual Trauma (MST) that occurred during basic training from 18 May 1988 to 07 July 1988. He further stated that he informed his Drill Sergeants of the assaults on three separate occasions. 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's complete military records were not available for review, 2) a DD Form 214 shows the applicant was relieved from active duty for training and transferred back to the 18th Field Hospital, Norfolk, VA on 01 September 1988 under the provisions of Army Regulation (AR) 635-200, Paragraph 16-9a, Reserve Component Personnel upon completion of MOS training with a separation code of MCD and character of service as honorable. Item 2 indicates he was Army/U.S. Army Reserve, 3) A DD Form 214 for Release from Active Duty shows the applicant was discharged on 10 June 1993 under the provisions of Army Regulation (AR) 635-200, Chapter 10, For the Good of the Service-In Lieu of Court-Martial, with a separation code of KFS, and reentry code of '3.' It shows his department/component as Regular Army.

b. The Army Review Boards 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) 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. The applicant provided a VA Rating Decision Letter dated 15 February 2024 showing he is 10% service-connected for Tinnitus and 0% service-connected for Bilateral Hearing Loss. Review of JLV and VA letters included as part of his application do not show that he is service-connected for any BH conditions. Review of JLV shows he was referred to BH by his VA primary care provider on 31 January 2024 with the presenting problem noted as MST history. The evaluating BH provider documented the diagnostic impressions as PTSD, Major Depressive Disorder (MDD), Recurrent, Severe, Insomnia Disorder, and Somatic Symptom Disorder and referred the applicant to the

PTSD Clinic and Recovery Center (chronic medical conditions) for further evaluation and treatment. He completed part of his intake with the PTSD clinic on 26 March 2024 with evaluating provider noting his index trauma as MST during basic training in 1988. Records show he missed his follow-up appointments to complete the intake and the diagnosis was deferred.

e. As part of his application the applicant included an undated Affidavit deposed under oath. The applicant asserted that he excelled as a young Soldier; however, that he was negatively influenced by his supervisor and co-worker to order office supplies without authorization. He indicated that when one of the blanket purchase agreement orders did not get processed, the Officer in Charge was made aware which resulted in an investigation by the Criminal Investigation Division (CID), to which he indicated he fully cooperated. The applicant stated he was given an Other than Honorable Discharge in Lieu of Court-Martial which ended his career.

f. The applicant provided a screenshot taken on 13 March 2024 showing a prescription for Amitriptyline (antidepressant) with three remaining refills.

g. A memorandum from the Criminal Investigation Division (CID) dated 14 November 2024 shows review of the Army criminal file indexes did not reveal a sexual assault investigation pertaining to the applicant.

h. 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. VA clinical records also show an initial diagnosis of PTSD which appears to be due to his experience of MST. He also had initial diagnoses of MDD, Insomnia Disorder, and Somatic Symptom Disorder, which were not clearly associated with his military service nor is he service-connected through the VA for any BH conditions. However, as the applicant's military service records detailing the specific circumstances that led to his discharge are unavailable for review, BH mitigation is unclear.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD, Other Mental Health Issues, and MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review. Review of the

applicant’s post-discharge VA records, consistent with his application to the ABCMR, indicate that he reported a history of MST in 1988 while in basic training. VA clinical records also show a preliminary diagnosis of PTSD which appeared to be attributed 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. The specific facts and circumstances that led to the applicant’s discharge were unavailable for review. In the applicant’s self-authored statement, he indicated that unauthorized ordering of supplies led to his discharge. It is of note that PTSD and MST do not interfere with the ability to distinguish between right and wrong and act in accordance with the right. Additionally, unauthorized purchases are not part of the natural history and sequelae associated with PTSD or MST. Thus, as it pertains to the misconduct that was described by the applicant in his application, BH mitigation would not be supported. However, as the specific facts and circumstances that led to his discharge are unavailable for review, a nexus cannot be established between his experience of MST or PTSD and misconduct that led to his discharge. As such, BH mitigation is unclear.

j. Regarding applicant’s assertion of Other Mental Health Issues, while there is insufficient evidence to support this diagnosis as it pertains to the applicant’s military service, the applicant’s self-assertion of Other Mental Health Issues alone merits consideration by the board.

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 not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of specific information related to the misconduct leading to the applicant’s separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. 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.

3. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

4. Army Directive 2014-28 (Request to Upgrade Discharge by Veterans claiming PTSD), dated 3 November 2014, states the office of the Surgeon General will provide expert guidance to ARBA on clinical manifestations of PTSD and behavioral indicators to help ARBA assess the presence of PTSD and its potentially mitigating effects. When requested, the office will provide consultation to supplement ARBA's effort on complex cases that exceed ARBA's capabilities.

5. 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 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.

6. 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.

7. 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. 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. 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.

8. 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//