

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240005689

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA (Veterans Affairs) Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault
- VA Decision letter, 12 January 2024
- VA letter, 3 April 2024

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 on 17 July 1990, on 69th Brigade tact site during duty, going to the TSQ (unknown) 73 van for communication checks, Staff Sergeant (SSG) L__ came behind him grabbing on his penis and kissing his neck. They got into a physical fight keeping SSG L__ off of him. He told the applicant if he said anything that his career was over. Also, that no one would believe him over SSG L__. After that he started drinking and drugging, until finally he failed the urinalysis and was busted down from E-4 to E-1 and chaptered out of the Army. Since married and divorced, lost his barber license, driver license and in and out of rehab facilities four times with his last treatment being August 2022. He has been maintaining his sobriety since. He sees a counselor once a month thru the VA for this incident.
3. The applicant enlisted in the Regular Army on 3 February 1988.

4. He was stationed in Germany for his first duty station from 3 January 1989 until 5 January 1992. He reenlisted on 9 August 1991, for a period of three years.

5. He received nonjudicial punishment on 6 December 1991, for between 18 August 1991 and 18 September 1991, wrongfully use a controlled substance containing the active ingredient THC (tetrahydrocannabinol). Also, on or about 31 October 1991, without authority, absent himself from his unit and did remain so absent until 4 November 1991. He was reduced to private/E-1.

6. On 27 December 1991, his immediate commander notified him of his intent to separate him from the service for wrongful use of drugs as detected on unit urinalysis test conducted on 18 September 1991, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12c for commission of a serious offense – drug use. He acknowledged receipt of the notification the same date.

7. On 27 December 1991, having been afforded the opportunity to consult with appointed counsel for consultation; or military counsel of his choice, he declined the opportunity to consult with counsel.

8. His immediate commander recommended that he receive a General Discharge Certificate.

9. The separation authority approved separation under the provisions of AR 635-200, chapter 14 for commission of a serious offense – drug use. He directed he be issued a General Discharge Certificate.

10. Accordingly, he was discharged under honorable conditions on 7 January 1992. His DD Form 214 shows he completed 3 years, 11 months, and 5 days of active service this period. He was awarded or authorized: Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Sharpshooter Marksmanship Qualification Badge (Grenade), and Marksman Marksmanship Qualification Badge (Rifle M-16). It also shows:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c
- Item 26 (Separation Code): JKK
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Misconduct/Abuse of Illegal Drugs

11. The applicant applied to the Army Discharge Review Board (ADRB) on 19 August 1992, for an upgrade of his character of service. After considering the evidence, the ADRB determined the discharge was proper and inequitable as to reason. Change reason to misconduct under AR 635-200.

12. DD Form 215 (Correction to DD Form 214) issued on 30 November 1995 shows:

- Item 25: AR 635-200, paragraph 14-12c
- Item 28: Misconduct

13. The applicant provides:

a. VA Decision letter, 12 January 2024, showing service connection for PTSD with alcohol and cannabis use disorder was granted with an evaluation of 70 percent effective 6 December 2022.

b. VA letter, 3 April 2024, stating the applicant continues to be engaged and participating in services through the Iowa City VA Healthcare System. He receives his care at the VA Davenport Community Resource and Referral Centers and is addressing concerns with PTSD and sleep.

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 (general) 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 3 February 1988; 2) The applicant received non-judicial punishment on 6 December 1991, for wrongfully use a controlled substance containing the active ingredient THC (tetrahydrocannabinol) and for being absent from his unit from 31 October- 4 November 1991; 3) The applicant was discharged on 7 January 1992, Chapter 14-12c-"Misconduct/Abuse of Illegal Drugs." His service was characterized as under honorable (general) conditions.

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) and VA documentation provided by the applicant were also examined.

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 including PTSD while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2004. He was predominately provided assistance for homelessness, emergency care for physical concerns, and substance dependence. He initially started inpatient and eventually outpatient treatment for substance dependence in 2015. He completed Compensation and Pension (C&P) evaluations for physical concerns in 2015 and then in 2017, which did not result in the applicant being diagnosed with a service-connected condition. However, the applicant continued to engage with the VA for assistance with homelessness and substance abuse/dependence, and he was readmitted into substance abuse treatment inpatient care in 2022. During this treatment program, he was diagnosed with Major Depression, and the applicant reported being exposed to MST during his active service. The applicant completed a C&P Evaluation for PTSD in 2022 on two occasions. The applicant was diagnosed with service-connected PTSD as a result of his report of MST (SC70%). He has continued in care predominantly for maintaining his sobriety and housing arrangements till present.

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 2022.

(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 2022.

(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 2022. The applicant did engage in avoidant behavior such as using illegal drugs, which could be 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, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based upon this and the following, the Board concluded upgrading the applicant's characterization of service from under honorable conditions (General) to honorable was appropriate:

(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 2022.

(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 2022.

(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 2022. The applicant did engage in avoidant behavior such as using illegal drugs, which could be 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 VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 7 January 1992 to show an honorable characterization of service.

X //signed//

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19880203 to 19910808."

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. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous

Honorable Active Service from” (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

4. 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.

5. 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.

6. 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.

//NOTHING FOLLOWS//