

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240005923

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- My Healthy Veteran Personal Medical Record issued 21 February 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 during basic training he was attacked, hit in the head and lost consciousness. He was then dragged into the latrine and sexually assaulted. He reported it to his drill sergeant who did not believe him and said he was lying. After this incident his behavior changed, and he began using substances to numb the pain and disassociated himself from others. He had a distrust for authority. He was a victim of sexual assault while in service and the post-traumatic stress disorder (PTSD) that he suffered caused behavioral issues and patterns of misconduct that led to his discharge.
3. The applicant provides a VA health record printed on 21 February 2024 which shows a comprehensive list of health problems his VA healthcare provider is helping him manage.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 19 August 1998.

b. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on/for:

- 1 November 1999 - disrespect towards a superior commissioned officer on or about 23 September 1999 and willfully and wrongfully expose in an indecent matter to public view his penis on or about 4 October 1999; his punishment included reduction to PVT/E-1
- 7 January 2000 - absent without leave from on or about 13 December 1999 to on or about 15 December 1999

c. The applicant record is void of a DA Form 3822-R (Report of Mental Status Evaluation) to show he was psychiatrically cleared for any administrative action.

d. The applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. The commander specifically noted the applicant's previous Article's 15's. The applicant acknowledged receipt on 3 February 2000.

e. After consultation with legal counsel, the applicant acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge

f. The immediate commander-initiated separation action against the applicant for a pattern of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

g. On 27 February 2000, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b. He would be issued a general, under honorable conditions characterization of service.

h. On 15 May 2000, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 6 months, and 27

days of active service with no lost time. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 3. It also shows he was awarded or authorized the Army Service Ribbon and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

i. A DD Form 215 (Correction to DD Form 214) dated 17 October 2024 shows his records was corrected to add the Humanitarian Service Medal.

5. On 18 November 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding military sexual trauma and no records were found.

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), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. In reaching its determination, the Board can consider the applicants 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 an upgrade of his general, under honorable conditions discharge, to honorable. He contends PTSD and MST 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 Regular Army on 19 August 1998.
- The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on/for:
- 1 November 1999 - disrespect towards a superior commissioned officer on or about 23 September 1999 and willfully and wrongfully expose in an indecent

manner to public view his penis on or about 4 October 1999; his punishment included reduction to PVT/E-1

- 7 January 2000 - absent without leave from on or about 13 December 1999 to on or about 15 December 1999
- The applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for a pattern of misconduct. The commander specifically noted the applicant's previous Article's 15's. The applicant acknowledged receipt on 3 February 2000.
- On 15 May 2000, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 6 months, and 27 days of active service with no lost time. He was assigned separation code JKA and the narrative reason for separation listed as "Misconduct," with a reentry code of 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, during basic training he was attacked, hit in the head and lost consciousness. He was then dragged into the latrine and sexually assaulted. He reported it to his drill sergeant who did not believe him and said he was lying. After this incident his behavior changed, and he began using substances to numb the pain and disassociated himself from others. He had a distrust for authority. He was a victim of sexual assault while in service and the post-traumatic stress disorder (PTSD) that he suffered caused behavioral issues and patterns of misconduct that led to his discharge.

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 100% service connected, including 70% for PTSD. The electronic medical record shows on 21 August 2014, the applicant contacted the crisis hotline and reported suicidal ideation with intent. On 29 October 2014, he once again contacted the crisis hotline and stated his wife and children left him and he intended to jump into traffic or off a bridge, "he would rather die than get a divorce". The applicant was psychiatrically hospitalized and a discharge summary, dated 3 November 2014, indicates he had recently become unemployed, was on probation, and had a history significant for bipolar disorder and polysubstance use disorder (intravenous methamphetamine, marijuana, LSD, ecstasy, synthetics, etc.). Upon assessment, the applicant further reported a history of being attacked in basic training, childhood verbal and physical abuse by his mother, a history of using street drugs, and an attempted suicide in 2004 resulting in the applicant being in the ICU in a coma for a week due to overdosing on his medication. He further shared having anger management problems and being on probation for physically abusing his

wife. He reported suicidal ideation without intent or plan and was requesting an appointment as soon as possible due to his fear of his anger and potential of harming his wife. Upon discharge he was diagnosed with Mood Disorder NOS, Rule-out Bipolar Disorder, and Polysubstance Use Disorder. The applicant once again reengaged with the VA via the crisis hotline 4 years later, on 26 October 2018. He was provided with a behavioral health intake appointment on 30 October 2018. The applicant reported his experience of MST during this session. The diagnostic impression from that assessment was PTSD and Bipolar I Disorder. In November 2018, the applicant started treatment via a specialized intensive treatment team, the Behavioral Health Interdisciplinary Program (BHIP). The applicant was once again hospitalized from 25 November 2019 to 4 December 2019 following an apparent suicide attempt. The record indicates the applicant continues to be treated via BHIP, a specialized intensive treatment team, and is diagnosed with PTSD, Bipolar Disorder, and Seizure Disorder.

f. The applicant participated in a C and P evaluation on 1 April 2019 and was diagnosed with MST related PTSD which resulted in his service-connection.

g. 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.

h. 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 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 and he is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to disrespect towards a superior commissioned officer, exposing in public view his penis, and one specification of being AWOL. The applicant's available medical record shows he has been repeatedly hospitalized and diagnosed with Bipolar Disorder and PTSD. Given his psychiatric history, it is likely the applicant was experiencing prodromal or early symptoms of his disorder while in military service, which would provide mitigation of his misconduct of engaging in the dysregulated behavior of exposing himself. In addition, the applicant is service connected for MST related PTSD. 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, given the association between MST and

difficulty with authority, his disrespect towards a superior commissioned officer would be mitigated by his experience of MST.

BOARD DISCUSSION:

1. 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 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 concurred with the advising 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.

2. 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 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 and he is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to disrespect towards a superior commissioned officer, exposing in public view his penis, and one specification of being AWOL. The applicant's available medical record shows he has been repeatedly hospitalized and diagnosed with Bipolar Disorder and PTSD. Given his psychiatric history, it is likely the applicant was experiencing prodromal or early symptoms of his disorder while in military service, which would provide mitigation of his misconduct of engaging in the dysregulated behavior of exposing himself. In addition, the applicant is service connected for MST related PTSD. 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, given the association between MST and difficulty with authority, his disrespect towards a superior commissioned officer would be mitigated by his experience of MST.

3. The Board determined based on the advising opine, there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board determined that the misconduct was not reflective of the applicant's overall character or potential for honorable service. Therefore, the Board found sufficient basis to grant relief, to upgrade the applicant's characterization of service to honorable.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing his characterization of service as honorable.

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.

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 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.

3. 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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. 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 post-traumatic stress disorder (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.

5. 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, 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.

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.

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.

7. 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//