

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240006627

APPLICANT REQUESTS: in effect, reconsideration of his previous petition for –

- a discharge due to disability
- a video/telephone appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: a 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 AR2001063456 on 11 April 2002.

2. The applicant indicates his request is related to post-traumatic stress disorder (PTSD), his other mental health conditions, and sexual assault/harassment. The applicant states, in effect –

a. He was diagnosed with a personality disorder before receiving a bad conduct discharge. He contends that this condition was the result of trauma related to the sexual advances from a relative he experienced as a child. He further contends that in 1976, while on active duty this trauma was triggered when an officer and an enlisted Soldier made sexual advances toward him. He self-medicated with drugs and alcohol to cope with his PTSD symptoms.

b. Proper protocol was not followed at the time of his discharge. He should have received a medical discharge. His chain of command was not interested in his medical condition, they just wanted him out of the military.

c. Since leaving the military he became a police officer and is currently serving as the Director of Public Safety. He has worked in this field for 30 years.

3. The applicant enlisted in the Regular Army on 1 March 1976. He held military occupational specialty 11B, infantryman. The highest rank attained was private/E-2.

4. His DA Form 2-1, Personnel Qualification Record, shows that during the period from 13 December 1976 to 19 October 1977 the applicant had lost time totaling 171 days, of which 76 days were due to being absent without leave (AWOL), and 95 days were due to imprisonment.

5. His record of misconduct includes:

a. A summary court-martial for being AWOL from 13 December 1976 to 17 December 1976, disobeying a lawful order, failing to secure his weapon, and for sleeping while on guard duty. He was sentenced to 25 days of hard labor and reduction to private/E-1.

b. He accepted nonjudicial punishment in accordance with Article 15, Uniform Code of Military Justice for failing to go to his appointed place of duty on 9 May 1977.

c. A special court-martial for being AWOL from 17 May 1977 to 6 June 1977. He was sentenced to 15 days hard labor and forfeiture of \$100.00 pay for two months.

d. A summary court-martial for being AWOL from 31 July 1977 to 31 August 1977. He was sentenced to 30 days of hard labor and forfeiture of \$150.00 pay per month for one month.

6. His record contains the following medical documents:

a. A DA Form 3349, Medical Condition-Physical Profile Record, 20 April 1976, which shows he was issued a temporary profile for a pulled muscle in his left thigh.

b. A DA Form 3349, undated, which shows the applicant received a temporary profile for chondromalacia patella.

c. Standard Form 513, 11 July 1977, which shows the applicant was diagnosis with "immature personality with passive aggressive features, chronic, severe." A military social worker evaluated the applicant and found, in part, that the applicant had a long history of difficulties with authority figures, difficulties handling dependency needs, and both passive and direct obstructionism. The social worker recommended the applicant be separated from military service in accordance with AR 635-200, Chapter 13, because he was unsuitable due to a personality disorder.

d. DA Form 3349, 19 July 1977, which shows the applicant was issued a temporary physical profile for mononucleosis with hepatic involvement.

e. DD Form 3349, 19 July 1977, issued a temporary physical profile for the mononucleosis with hepatic involvement.

f. A Statement of Social Work Evaluation, 15 July 1997. After evaluation of the applicant a psychiatrist found the applicant suffered from a "passive-aggressive personality, chronic, severe." The psychiatrist recommended discharge in accordance with AR 635-200, Chapter 13 because the applicant was unsuitable for service due to a personality disorder.

g. A physical examination completed on 27 October 1977 for the purpose of separation wherein the applicant described his health as good and that he was not taking any medication. However, he noted having experienced sleepwalking, depression, excessive worry, and nervous trouble. The military physician noted that the applicant's weight gain and stomach cramps were related to his drug use. Further, his nervousness and depression had been ongoing for four years; therefore existed prior to service. The applicant was found qualified for separation.

h. A mental status evaluation, 27 October 1977. This evaluation shows the applicant did not have significant mental illness. He was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and he had the mental capacity to understand and participate in board proceedings. The applicant met the retention standards prescribed in AR 40-501, Medical Services-Standards of Medical Fitness.

7. The applicant's immediate commander requested the applicant be discharged under the provisions of AR 635-200, Chapter 13, on 21 October 1977. He stated the applicant's conduct and efficiency were unsatisfactory. The reasons cited were the applicant's frequent incidents of a discreditable nature. Discharge for unsuitability was not deemed appropriate because his behavior was not due to an inability to satisfactorily perform within the meaning of unsuitability.

8. On 31 October 1977, after being advised by counsel of the basis of the contemplated action and its effects, he elected to waive his right to consideration of his case by a board of officers, waive his right to personal appearance before a board of officers, and he elected not to submit statements in his own behalf.

9. On 2 November 1977 –

a. The applicant requested he be granted a medical waiver for his physical examination. He acknowledged that he may be waiving his medical benefits.

b. The separation authority approved the recommended discharge and directed the applicant receive an under other than honorable conditions characterization of service.

10. The applicant was discharged on 4 November 1977. His DD Form 214, Report of Separation from Active Duty, confirms he was discharged under the provisions of AR 635-200, Chapter 13, by reason of misconduct. His service was characterized as under other than honorable conditions.

11. The Criminal Investigation Division was unable to locate any records related to sexual trauma pertaining to the applicant.

12. 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. Additionally, applicants may be represented by counsel at their own expense.

13. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of a request for discharge due to disability. He contends he experienced an undiagnosed mental health condition, including PTSD, and sexual harassment/assault (MST) that mitigates his discharge.

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 1 March 1976.
- A summary court-martial for being AWOL from 13 December 1976 to 17 December 1976, disobeying a lawful order, failing to secure his weapon, and for sleeping while on guard duty.
- He accepted NJP for failing to go to his appointed place of duty on 9 May 1977.
- A special court-martial for being AWOL from 17 May 1977 to 6 June 1977.
- A summary court-martial for being AWOL from 31 July 1977 to 31 August 1977.
- The applicant's immediate commander requested the applicant be discharged under the provisions of AR 635-200, Chapter 13, on 21 October 1977. He stated the applicant's conduct and efficiency were unsatisfactory. The reasons cited were the applicant's frequent incidents of a discreditable nature. Discharge for unsuitability was not deemed appropriate because his behavior was not due to an inability to satisfactorily perform within the meaning of unsuitability.
- The applicant was discharged on 4 November 1977. His DD Form 214 confirms he was discharged under the provisions of AR 635-200, Chapter 13, by reason of misconduct. His service was characterized as under other than honorable conditions (UOTHC).

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 asserts he self-medicated with drugs and alcohol to cope with PTSD symptoms from a childhood trauma that was triggered by an MST experience. He

indicated PTSD, MST, and “other mental health” as issues or conditions related to his request. A clinical record by a USARB Social Work dated 11 July 1977 showed the applicant presented with “considerable anxiety about his situation,” and the documentation outlined a problematic family and childhood history and stated that the applicant wanted out of the Army. He was diagnosed with Passive-Aggressive Personality and separation under 635-200, chapter 13 was recommended. A Statement of Social Work Evaluation dated 15 July 1977 again discussed his family and legal history, and the applicant reported symptoms of nervousness, sleep disturbance, and headaches. It is noted that he “tends to project responsibility for his adjustment problems in the military to what he describes as poor leadership,” and the evaluator recommended discharge due to inability to adjust to a military environment with little potential for further rehabilitative efforts. He was deemed unsuitable due to a personality disorder and separation was recommended in accordance with 635-200, chapter 13. A Report of Mental Status Evaluation dated 27 October 1977 showed the applicant the applicant was mentally responsible, able to distinguish right from wrong, and met retention standards. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses. The applicant is ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. However, there is insufficient evidence to warrant a referral to the Disability Evaluation System (DES).

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD triggered by MST, at the time of the misconduct. DoD documentation from his time in service showed that he reported nervousness, sleep difficulty, and difficulty adjusting to the military environment, and he was diagnosed with a Passive-Aggressive Personality Disorder. There are no mental health records post-discharge available for review.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. The applicant states in his application that he experienced childhood sexual trauma, which was “triggered” by an officer and enlisted Army infantryman. He indicated MST as a condition related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. While on active service, the applicant reported mental health symptoms, including anxiety, nervousness, and sleep difficulty, and he was diagnosed with a personality disorder. While there are no records indicating a diagnosis of PTSD, the applicant asserts a fully mitigating behavioral health experience, MST. Additionally, a diagnosis of a personality disorder was documented, and it was recommended that he be discharged due to this unsuitable condition. However, the command opted to pursue discharge related to misconduct, resulting in an UOTHC characterization. Avoidant behavior, such as going AWOL, and behavior associated with disregard for authority can be natural sequelae to mental health conditions associated with exposure to traumatic and stressful events. The applicant also admits to drug and alcohol use, which is another common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure. Given the nexus between trauma exposure and avoidance, and in accordance with liberal consideration, the basis for separation is mitigated. However, there is insufficient evidence to warrant a referral to DES. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33). In accordance with Liberal Consideration, a change to the narrative reason for discharge to something more favorable, such as AR 635-200, Chapter 5-14, "other designated physical or mental condition" could be considered by the board.

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. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the medical records and conclusions of the advising official. One possible outcome was to approve the applicant's request based upon guidance for consideration of discharge upgrade requests. However, the Board determined that they did not agree with the medical advisory opinion in that the applicant's basis for separation was only partially mitigated, as childhood trauma existed prior to service. Based upon a preponderance of the evidence, and notwithstanding the recommendation of the advisory official, the Board

determined the character of service the applicant received upon separation was not in error or unjust.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD triggered by MST, at the time of the misconduct. DoD documentation from his time in service showed that he reported nervousness, sleep difficulty, and difficulty adjusting to the military environment, and he was diagnosed with a Passive-Aggressive Personality Disorder. There are no mental health records post-discharge available for review.

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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:

<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 to amend the decision of the ABCMR set forth in Docket Number AR2001063456 on 11 April 2002

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 (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, established the Army Physical Disability Evaluation System. It prescribed –

a. The mere presence-of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, grade, rank, or rating, given due consideration to his or her availability for worldwide deployment under field conditions.

b. Commanders will refer members to the servicing Medical Treatment Facility for medical evaluation when the member is believed to be unable to perform the duties of his office, grade, rank, or rating.

c. Once a member has been enlisted, inducted, or commissioned, the fact that he may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that he is unfit because of physical disability. A Soldier who is not physically qualified to perform his or her duties worldwide under field conditions is unfit because of physical disability.

d. No enlisted member may be referred for physical disability processing when action has been or will be taken to separate him for unfitness under chapter 13 or misconduct under chapter 14, AR 635-200, except when the officer exercising general court-martial jurisdiction determines that the disability was the cause or substantial contributing cause of the misconduct, or that circumstances warrant physical disability processing in lieu of administrative processing.

3. AR 635-200, Personnel Separations - Enlisted Separations, provides:

a. 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. 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. Paragraph 13-5(a), in effect at the time, for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted an undesirable discharge was normally considered appropriate.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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 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.

5. Title 10, U.S. Code, section 1556 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.

6. AR 15-185, Boards, Commissions, and Committees-ABCMR prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//