

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240006760

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his general, under honorable conditions discharge.
- a change to the narrative reason for separation
- a personal appearance before the Board

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)
- Self-Authored Statement
- Department of Veterans Affairs (VA) – letter of reference
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20230001680 on 10 October 2023.

2. The applicant states that in late 2019, during his deployment in Korea, he experienced a deeply traumatic incident involving Military Sexual Trauma (MST), which has profoundly impacted his life. He was subjected to physical and sexual abuse by a female counterpart, who repeatedly slapped, threatened, and coerced him into engaging in sexual acts against his will. The perpetrator manipulated him through blackmail, threatening to ruin his career with false accusations, which were documented and investigated by the CID. The applicant describes the emotional scars left by this ordeal, including intense fear, vulnerability, and a complete loss of control.

a. He further explains that the immediate aftermath of the incident was devastating, as he struggled with overwhelming feelings of shame, guilt, and humiliation. Fear of retaliation and career damage led him to contemplate suicide, but he found the strength to resist through the support of his loved ones. Despite his attempts to report the abuse

and seek justice, he encountered skepticism, disbelief, and victim-blaming, which only exacerbated his trauma. The lack of support from peers and superiors, as well as ostracization within his unit, severely impacted his professional progress and self-esteem.

b. The applicant emphasizes that his purpose in sharing this painful experience is not to seek sympathy but to advocate for change and support within the military. He stresses the need for addressing MST and ensuring that survivors are heard, supported, and met with understanding rather than disbelief. He requests that the Army Review Board Agency thoroughly investigate his case and consider upgrading his character of service to reflect the trauma's impact on his career and well-being. He is prepared to provide all necessary documentation, including medical records and therapy reports, to support his request.

c. He hopes that by addressing his case, the military can foster a more compassionate environment where MST survivors are supported in their recovery. He concludes by expressing his gratitude for any assistance the Army Review Board Agency can provide in upgrading his character of service and looks forward to working together to bring about positive change within the military.

3. The applicant provides:

a. On 17 January 2024, a VA Licensed Clinical Social Worker Ms. D.H. states, the applicant is currently engaged in mental health therapy. She would like to provide additional information regarding applicant's condition. In addition to being diagnosed with Complex Post Traumatic Stress Disorder (PTSD) on 29 December 2022, he has also been diagnosed with Military Sexual Trauma (MST). The applicant has expressed that the Army never examined the long-term effects of his tour to Korea and how it affected him, specifically due to being sexually harassed by a female. It is important to note that the applicant is actively working on himself and accepting his emotions and experiences during the initial investigation and its aftermath. He remains committed to seeking treatment and support at the VA to address his concerns and symptoms. Considering the applicant's diagnoses of Complex PTSD and MST, he is requesting that his character of service be upgraded too Honorable. He believes that his experiences of PTSD and MST have had a significant impact on his life and that these diagnoses should be taken into consideration when evaluating his service.

b. A copy of his DD Form 214.

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

a. He enlisted in the Regular Army on 16 September 2015.

b. On 9 February 2021, the article 15-6 investigation package into allegations of sexual harassment against the applicant, which included portion of the investigation officers (IO) finds and recommendations memorandum. The IO found by the preponderance of the evidence the applicant sexually harassed a female sergeant (SGT) on or about 16 November 2020. The recommendation portion of the memorandum is not available for the board's consideration.

c. On 11 February 2021, Memorandum from the Commanding General (CG), Subject: Summary of Results of AR 15-6 into Formal Sexual Harassment Complaint against the applicant, states after a thorough review, the CG found that the preponderance of evidence supported the conclusion the applicant engaged in sexual harassment of another Soldier at his residence. As such, the CG concurred with the IO's findings which substantiated the allegation against the applicant. The applicant was afforded 7 calendar days to submit appeal in writing.

d. On 16 February 2021, the applicant was afforded the opportunity to consult with Trial Defense Service concerning pending administrative separation.

e. On 26 February 2021, the applicant acknowledged receipt of the CG's memorandum and elected to appeal without submitting matter.

f. On 8 November 2021, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for sexual harassment of another soldier at the applicant's residence when the applicant got on top of her and attempted to kiss her without her consent. He recommended the applicant to receive and other than honorable conditions discharge. On 8 November 2021, the applicant acknowledges receipt of the initiation of separation.

g. On 16 November 2021, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he requests consideration of his case by an administrative separation board
- he requests personal appearance before administrative separation board
- he requests consulting council and representation by military council and or civilian council at no expense to the government
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he has not proud and unrestricted report of sexual assault within 24 months of initiation of the separation action

- he did not believe that he suffered from post-traumatic stress disorder or traumatic brain injury as a result of deployment overseas in support of a contingency operation during the previous 24 months
- he will be ineligible to apply for enlistment for a period of 2 years after discharge

h. On 23 November 2021, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense.

i. In the service record shows, the chain of command recommends the applicant be separated under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense and the applicant issued an other than under honorable conditions discharge.

j. On 11 February 2022, the applicant was notified of his administrative separation board and informed the applicant of his rights during the board proceedings. On 14 February 2022, the applicant acknowledges receipt of the referral of his separation to the administrative separation board.

k. On 10 March 2022, a DA Form 1574-2 (Report of Proceedings by Board of Officers) shows, the board found the allegation of on or about 15 November 2020, the applicant sexually harassed sergeant (SGT) J.H. at his residence when he got on top of her and attempted to kiss her without her consent was supported by a preponderance of the evidence. The finding supported involuntary separation under the provisions of AR 635-200 paragraph 14-12c for commission of a serious offense. The board recommended the applicant be separated from the Army with an under honorable conditions (general) discharge and that the separation be suspended for a period of 12 months.

l. On 10 May 2022, the separation authority directs the applicant to be separated from the Army prior to the expiration of current term of service (ETS) under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. The applicant would be issued a general, under honorable conditions characterization of service.

m. Orders 290-0171, dated 17 October 2022, discharged the applicant from active duty with an effective date of 28 December 2022.

n. On 15 November 2022, the III Corps separation authority review the applicant's separation packet. After careful consideration of all matters, he determined that the applicant's medical condition is not the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination. He directed the applicant to be separated from the army prior to the ETS. The medical evaluation board

(MEB) and physical evaluation board (PEB) proceedings are hereby terminated. The recommendation of the MEB was disapproved. The applicant will be discharged from the service under AR 365-200, chapter 14-12c. The applicant would be issued a general, under honorable conditions characterization of service.

o. On 5 December 2022, he was discharged from active duty. His DD Form 214 shows he was discharged under the provisions of chapter 14-12c of AR 635-200 with a general, under honorable conditions characterization of service. He completed 7 years, 2 months, and 14 days of active service with no lost time. Block 18 (Remarks) shows he served in Kuwait from 17 November 2018 to 12 February 2019. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal with 1 silver oak leaf cluster
- Army Good Conduct Medal with bronze clasp with 2 knots
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Non-Commissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Military Outstanding Volunteer Service Medal
- NATO Medal
- Air Assault Badge
- Driver and Mechanic Badge – Mechanic
- Driver and Mechanic Badge with Driver Wheeled clasp

5. On 10 October 2023, the ABCMR rendered a decision in Docket Number AR20230001680. The Board determined the evidence of the record was sufficient to render a fair and equitable decision. After reviewing the application, all supporting documents, and evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Psychologist. The Board found insufficient evidence of in-service mitigating factors. The Board considered the conclusion of the medical advising official regarding his MEB outweighing the pattern of misconduct that led to the applicant's discharge. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation were not in error or unjust.

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. Army Regulation 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).

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. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for an upgrade of his general, under honorable conditions discharge and a change to his narrative reason for separation. He contends military sexual trauma (MST), mental health conditions including PTSD are related to his request for an upgrade. 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 16 September 2015; 2) On 9 February 2021, an article 15-6 investigation found by the preponderance of the evidence the applicant sexually harassed a female sergeant (SGT); 3) On 10 May 2022, the separation authority directs the applicant to be separated from the Army prior to the expiration of current term of service (ETS) under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. The applicant would be issued a general, under honorable conditions characterization of service; 4) On 5 December 2022, the applicant was discharged with a general, under honorable conditions characterization of service. His narrative reason for separation listed as "Misconduct (Serious Offense); 5) On 10 October 2023, the ABCMR reviewed and denied the applicant's request for an upgrade.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and medical documentation provided by the applicant were also examined.

c. The applicant stated he experienced MST and mental health conditions including PTSD, which mitigates his misconduct. The applicant began to engage in behavioral health services while stationed in Korea. He completed an initial intake on 04 February 2020. He was under investigation for being the perpetrator of a sexual assault. He reported feeling stressed and depressive symptoms. His goal of treatment was "to ride out the investigations and develop coping skills." The applicant denied exposure to a traumatic event, and he was diagnosed with problems related to other legal circumstances. He was seen for two sessions before discontinuing treatment. The applicant reengaged in treatment a few months later. He stated the charges of sexual assault against him were dropped, but he continued to struggle with anger and irritability surrounding the situation. He again denied exposure to a traumatic event, and he was diagnosed with problems related to other legal circumstances. The applicant was seen for two additional sessions, and his treatment was considered complete before he moved to his next duty station. The applicant did not reengage in behavioral health services till he was seen for Mental Status Evaluation (MSE) as part of his Chapter 14-12c separation proceedings on 21 May 2021. The applicant was properly evaluated by a clinical psychologist. He was assessed for PTSD, a traumatic brain injury, substance use disorders, depression, and sexual assault. He was determined to not have a mental health condition that fails medical retention standards and was psychiatrically cleared for administrative separation. The applicant reported problems with sleep on 26 May 2021, and he was prescribed sleep medication. On 17 August 2021, the applicant was seen as a walk-in appointment at behavioral health services. He was reporting anger, depression, anxiety, and increased alcohol use. The applicant stated these issues were related to being accused of sexually assault last year. He was diagnosed with alcohol dependence and referred to substance abuse treatment at SUDCC. The applicant engaged in individual and group substance abuse treatment. On 20 October 2021, the applicant was seen as a walk-in appointment at behavioral health services. He was endorsing vague suicidal ideation and stress related to his earlier investigation in Korea being opened as part of his current investigation for sexual assault/harrassment. He did describe the relationship in Korea as destructive and manipulative. The applicant continued in substance abuse treatment and occasional walk-in behavioral health treatment for stress. He was seen for another MSE on 02 November 2021 as part of his Chapter 14-12c separation proceedings. He again was appropriately assessed along with his medical records. The applicant was determined to not have a mental health condition that fails medical retention standards and was psychiatrically cleared for administrative separation.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected chronic adjustment disorder (70%SC) after his discharge. In late 2023, a VA behavioral health provider diagnosed the applicant with PTSD due to his report of being a victim of MST in Korea. He was seen for 5 sessions with this provider before the applicant discontinued in late January 2024, and the applicant provided corresponding hard-copy medical documentation from this VA provider as well.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant reported to have experienced MST to a VA provider, who diagnosed him with PTSD. The applicant has been diagnosed with service-connected chronic adjustment disorder by the VA. During his active service, he did report symptoms of anxiety and depression as a result of being accused twice of perpetrating MST toward other service-members.

(2) Did the condition exist or experience occur during military service? Yes, there is sufficient evidence the applicant reported to have experienced MST to a VA provider, who diagnosed him with PTSD. The applicant has been diagnosed with service-connected chronic adjustment disorder by the VA. During his active service, he did report symptoms of anxiety and depression as a result of being accused twice of perpetrating MST toward other service-members.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant experienced mental health symptoms while on active service. He also has been diagnosed with service-connected chronic adjustment disorder. Later due to the applicant's report of experiencing MST to a VA provider, he was diagnosed with PTSD. However, there is no nexus between the applicant's reported experience of MST, his diagnosed mental health conditions, including PTSD and his misconduct of sexual harassment of a fellow service-member in that: 1) this of misconduct is not a part of the natural history or sequelae of the applicant's report of MST, mental health conditions, including PTSD; 2) the applicant's mental health conditions, including PTSD and experience of MST does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant committed serious misconduct (for sexual harassment of another soldier at the applicant's residence when the applicant got on top of her and attempted to kiss her without her consent). As a result, his chain of command initiated separation action against him. He was discharged with an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of chapter 14-12c of AR 635-200, due to his serious misconduct. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "Misconduct" and the separation code is "JKQ." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in Block 28, and separation code, entered in Block 26, will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. The applicant did not complete his term of service and the Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and there is no reason to change it.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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 AR20230001680 on 10 October 2023.

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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 635-200 (Active Duty Enlisted Administrative Separations), 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.

2. Army Regulation 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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. 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. 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.

//NOTHING FOLLOWS//