

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240007687

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 16 May 2024
- Self-authored statement, undated
- Psychiatrist Evaluation, 25 October 2023

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 he was sexually assaulted and harassed by the non-commissioned officer in his unit, and he made the decision to leave before someone got hurt. At the time he was young and did not know what to do. For the past thirty years he has suffered from depression, nightmares, hallucinations.
3. The applicant provides nine pages of a psychiatrist evaluation showing he reported having been sexually assaulted and harassed to a level that he had to leave the military. He has nightmares, flashbacks, cannot sleep, anxiety and depression, and cannot be around people. Additionally, the examining psychiatrist noted the applicant was diagnosed with major depression and post traumatic stress disorder.
4. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 13 September 1989.

b. Two DA Forms 4187 (Personnel Action) shows his duty status was changed on the following dates:

- Present for Duty to Absent Without Leave – 17 June 1992
- Absent Without Leave to Dropped from Rolls – 17 July 1992

c. The DD Form 616 (Report of Return of Absentee) shows he was apprehended by civilian authorities and returned to military control on 15 December 1993.

d. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review with this case.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 8 March 1994 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of trial by court-martial. He completed 2 years, 11 months, and 28 days of net active service with lost time from 17 June 1992 to 12 September 1993. His service was characterized as under other than honorable conditions. He was issued the separation code "KFS" and the reentry code "3". Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- First Class Qualification Badge (Hand Grenade)

5. The Department of the Army Criminal Investigation Division letter, 11 March 2025, shows a search of the Army criminal files indexes revealed no sexual harassment records pertaining to the applicant.

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

7. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. The applicant indicated Sexual Assault/Harassment is related to his request. 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 (RA) on 13 September 1989, 2) his duty status was changed to Absent Without Leave (AWOL) on 17 June 1992 and from AWOL to Dropped from Rolls on 17 July 1992, 3) he was returned to military control on 15 December 1993, 4) the applicant was discharged on 08 March 1994 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial with a separation code of KFS and reentry code of '3.' 5) a memorandum from the Department of the Army Criminal Investigation Division dated 11 March 2025 shows a search of the Army criminal files indexes revealed no sexual harassment records pertaining to the applicant.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Medical Examination dated 07 April 1989 for the purposes of enlistment shows item number 42, psychiatric, as 'normal, on clinical evaluation. The associated Report of Medical History shows he marked 'no' to all BH-related items.

d. A review of JLV was void of any documentation showing that he is service-connected through the VA for any conditions and there were no VA records available for review; however, it is of note that his UOTHC discharge renders him ineligible for VA clinical services.

e. An undated self-authored statement from the applicant shows that he reported he was sexually harassed by a noncommissioned officer (NCO) who was over his unit. As a result of the harassment, the applicant asserted that he "had to leave before someone got hurt," that he did not know what to do, and ever since his life has been affected by depression, nightmares, and hallucinations.

f. The applicant included civilian/non-VA BH records (facility not specified) for the period of treatment from 25 October 2023 through 28 March. His treating psychiatrist documented that he reported a history of "sexual and mental harassment, to a level that he had to leave the Military." Regarding his BH symptoms, he endorsed nightmares, flashbacks, problems sleeping, anxiety, depression, difficulty being around others, not

going out much, hypervigilance, auditory hallucinations, and paranoid thoughts that others are following him. The provider diagnosed him with Major Depressive Affective Disorder (MDD), Recurrent Episode, Severe, Specified as with Psychotic Behavior and Posttraumatic Stress Disorder (PTSD). He was prescribed Lexapro (antidepressant), Gabapentin for anxiety and alcohol dependence, and Seroquel to help with hallucinations and mood.

g. Review of the applicant's service records shows he was awarded an Army Achievement Medal (AAM) for the period of service from 29 May 1990 to 16 August 1991.

h. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was a victim of Military Sexual Trauma (MST), which is a mitigating condition. Although the applicant has been diagnosed with MDD and PTSD since being discharged from the military by a civilian/non-VA BH provider, the date of onset of these conditions was not specified in the available documentation. This Advisor would contend that the applicant's history of MST mitigates his misconduct.

i. Kurta Questions:

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

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the available in-service records were void of any BH diagnosis or treatment history. The applicant is not service-connected through the VA for any conditions. Since being discharged from the military, the applicant reported a history of MST, which was also documented in civilian/non-VA BH treatment records provided by the applicant. Under Liberal Consideration, the applicant's self-assertion of MST alone is sufficient to establish that the applicant was a victim of MST. As there is an association between avoidance behaviors and trauma, there is a nexus between the applicant's misconduct of going AWOL and his history of MST. As such, BH mitigation is supported.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the length of the AWOL offense and that the AWOL only ended as a result of civilian apprehension, the Board found that any mitigation from the medical review was outweighed by the other facts leading to the applicant's separation. As a result, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//
X

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. 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.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated

service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 conduct triable by court-martial would receive a separation code of "KFS."

5. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to

Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

//NOTHING FOLLOWS//