

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240008118

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 7 May 1982, to show and information related to absent without leave (AWOL) changed to result of military sexual trauma (MST):

- item 1 (Name last, first, middle) [REDACTED]
- item 3 (Social Security Number) [REDACTED] vice [REDACTED]
- item 24 (Character of Service) from Under Other Than Honorable to Honorable
- remove all derogatory information from his records
- personal appearance before the Board via video and or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Ohio Circuit Court documents dated 7 December 1979
- Commonwealth of Kentucky Certificate of Live Birth
- Jefferson District Court Documents (Louisville, Kentucky) dated 29 April 1997
- Social Security Administration Card

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 his social security number was incorrect at the time of his enlistment. His current legal name was changed through the courts based on an adoption. Circumstances related to his character of service was due to MST and would have been handled more justly today without a derogatory designation. His AWOL was the result of MST, and that time should be considered as a period of honorable service. He agreed to separation under duress and due to the trauma of the MST, he has dealt

with post-traumatic stress disorder (PTSD), depression, suicidal attempts, difficulty maintaining employment, relationships and inability to consider any challenge to original records. However, due to intervention by family and the changes in the laws, he has concluded that his rights would be better protected in the current climate. In addition to the correction of his DD Form 214, he also requests all derogatory information be removed from his service record.

3. A review of the applicant's official record shows the following:

a. He enlisted in the Regular Army on 4 February 1981.

b. On 30 December 1981, the applicant's unit reported him AWOL as of 29 December 1981 and on 1 February 1982, he was dropped from the rolls (DFR) effective 28 January 1982. On 24 March 1982, his duty status changed from DFR to present for duty.

c. On 27 January 1982, court-martial charges were preferred on the applicant for being absent without authority from 29 December 1981 to the present time.

d. The service record is void of prior documentation of nonjudicial punishment and the applicant's memorandum request for discharge for the good of the service, Chapter 10, Army Regulation 635-200.

e. In a memorandum dated 16 April 1982, to the commander, the applicant indicated that he understood that he was not required to undergo a medical examination for separation from active duty and elected not to undergo a separation examination.

f. DA Form 3822-R (Report of Mental Status Evaluation), dated 23 April 1982, confirmed the applicant was referred for a mental evaluation because he was being considered for discharge for misconduct. The evaluation further indicated:

- normal behavior and fully alert
- fully oriented and stable
- level mood and clear thinking process
- normal thought content; good memory
- no significant mental illness
- mentally responsible and able to distinguish right from wrong
- able to adhere to the right and has the mental capacity to understand and participate in the proceedings
- he meets the retention standards prescribed in chapter 3, AR 40-501

g. On 4 May 1982, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the

good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. Memorandum, Subject: Medical Examination for Separation of Enlisted Personnel other than Normal ETS dated 22 April 1982, indicates the applicant elected not to undergo medical examination before separation.

i. On 7 May 1982, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year and 5 days of active service with 111 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge Conduct Triable by Court-Martial," with reentry code 3, 3B, 3C. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M16)

j. 30 pages of medical documents detailing medical treatment of the applicant before and after his period of AWOL, to include but not limited to inpatient treatment for episodic excessive alcohol abuse; mild acute manifested by occasional episodes of excessive alcohol consumption and suicidal ideation and marital counseling.

4. The applicant provides:

a. Ohio Circuit Court documents dated 7 December 1979, indicates a judgment granting an adoption with the child assuming the name of [REDACTED]

b. Commonwealth of Kentucky Certificate of Live Birth indicates the birth name of [REDACTED] lined through and [REDACTED] typed above the name.

c. Jefferson District Court Documents (Louisville, Kentucky) dated 29 April 1997 granted judgment to petitioner to show name is changed from [REDACTED]

d. Social Security Administration Card issued to [REDACTED] showing the social security number of [REDACTED].

5. On 26 June 1985, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, and sexual harassment/assault (MST) that mitigates his misconduct.

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 4 February 1981.
- On 30 December 1981, the applicant's unit reported him AWOL as of 29 December 1981 and on 1 February 1982, he was dropped from the rolls (DFR) effective 28 January 1982. On 24 March 1982, his duty status changed from DFR to present for duty.
- On 27 January 1982, court-martial charges were preferred on the applicant for being absent without authority from 29 December 1981 to the present time.
- On 4 May 1982, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.
- The applicant was discharged on 7 May 1982, and he completed 1 year and 5 days of active service.

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 his AWOL was the result of MST, and he was under duress due to the trauma of the MST. He indicated PTSD and MST as factors associated with his misconduct. A Report of Mental Status Evaluation dated 23 April 1982 showed no indication of any mental health symptoms and indicated that the applicant met retention standards and had the mental capacity to understand and participate in board proceedings. Medical records dated 23 October 1981 showed a diagnosis of "Episodic Excessive Alcohol Abuse" and that the applicant was hospitalized for observation due to attempted suicide. Additional documentation showed he was admitted on 11 October 1981 and discharged on 13 October 1981, and he discussed marital problems, which precipitated his alcohol use and an attempt to "walk out the window." However, the applicant appeared to not have recollection of this event. Records from his hospitalization discussed several threats of suicidal ideation leading up to the hospitalization and the use of physical restraints as well as Thorazine to calm the applicant. A Medical Record from 29 March 1982 showed the applicant reported feelings of depression and a desire to get out (of the military). An Army Discharge Review Board case from May 1985 showed that the applicant reported a sexual assault that occurred on 19 December 1981 and indicated this trauma precipitated his AWOL,

but the board denied relief. There was sufficient evidence that the applicant experienced a 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 the applicant initiated mental health treatment through the VA in May 2024, and he reported symptoms of depression, anxiety, and PTSD. He discussed two experiences of MST by a first sergeant and an NCO. He discussed both physical and sexual assault, and he was diagnosed with PTSD and Generalized Anxiety Disorder. He has routinely engaged in psychotherapy and his most recent encounter was on 10 February 2025.

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.

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, at the time of the misconduct. DoD documentation showed that the applicant was hospitalized due to suicidal ideation secondary to marital problems and alcohol use. VA records, starting in 2024, showed that the applicant has engaged in mental health treatment for PTSD and Generalized Anxiety Disorder associated with MST.

(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. He described in-service related trauma, a sexual assault.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed documentation of mental health symptoms, including suicidal behavior, while on active service. Additionally, the applicant is being treated for PTSD resulting from MST through the VA. The applicant asserts a fully mitigating BH experience, MST, and there is an association between MST and avoidant behavior, such as going AWOL. Given the nexus between trauma exposure, avoidance, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Change/remove information related to absent without leave (AWOL) as result of military sexual trauma (MST): DENY, based upon the information in the record showing the applicant did go AWOL during his military service, the Board concluded removing such information would result in providing an incomplete summary of the applicant's military record.
- Change Name: GRANT. Based upon the provided court order from the applicant, the Board concluded there was sufficient evidence to change the name reflected on the applicant's DD Form 214.
- Change SSN: DENY. The Board noted the provided SSN card from the applicant but would request the applicant receive documentation from the Social Security Administration showing the applicant changed his SSN from the SSN currently reflected on the DD Form 214 to the new SSN reflected on the card.
- Upgrade characterization of service: DENY. Although the Board concurred with the mitigation for the AWOL offense, the Board noted the applicant had additional misconduct (multiple fraudulent checks). As a result of that additional misconduct, the Board concluded there was insufficient evidence to upgrade the applicant's characterization of service.
- Remove all derogatory information: DENY. The Board determined there was insufficient justification to remove derogatory information from the applicant's record and a lack of any evidence of an injustice warranting such removal.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

:XXX :XXX :XXX GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by amending the name reflected in block 1 to reflect the requested name annotated on the provided court order.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to all other requested relief.

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. Title 10, USC, section 1553, (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming PTSD, Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.
3. 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.
4. AR 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.

5. Army Regulation (AR) 635-8 (Separation Processing and Documents), prescribes policy and procedural guidance relating to transition management; it explains separation document preparation, distribution, and correction. Paragraph 5-6 (Rules for Completing the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides detailed instructions for data required in each block of the DD Form 214.

a. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The DD Form 214 is a historical document that should reflect the record as it existed at the time the DD Form 214 was created.

b. Block 1 (Name), compare original enlistment contract or appointment order and review official record for possible name changes. If a name change has occurred list other names of record in block 18 (Remarks).

c. Block 3 (Social Security Number), verify accuracy by reviewing initial enlistment contract and/or application for appointment. If the Soldier has had more than one social security number, list the other social security number of record in block 18.

d. Block 24: Characterization of Service. Correct entry is vital since it affects a Soldier's eligibility for post-service benefits. Characterization or description of service is determined by directive authorizing separation. The character of service must be one of the seven designations below:

- HONORABLE.
- UNDER HONORABLE CONDITIONS (GENERAL).
- UNDER OTHER THAN HONORABLE CONDITIONS.
- BAD CONDUCT
- DISHONORABLE.
- DISMISSED.
- UNCHARACTERIZED.

6. 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. 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. 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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

8. 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.

9. 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.

10. Army Regulation 190-45 (Law Enforcement Reporting), prescribes policies, procedures, and responsibilities on the preparation, reporting, use, retention, and disposition of Department of the Army (DA) forms and documents, listed in sections III and IV of appendix A, related to law enforcement (LE) activities. It implements Federal reporting requirements on serious incidents, crimes, and misdemeanor crimes. It also assigns the geographic areas of responsibility to a specific installation Provost Marshal Office (PMO) or Directorate of Emergency Services (DES). Paragraph 3-6 (Amendment of records), a. Policy. An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. Requests to amend reports will be granted only if the individual submits new, relevant and material facts that are determined to warrant their inclusion in or revision of the police report. The burden of proof is on the individual to substantiate the request. Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a police report is an investigative determination that is independent of whether or not subsequent judicial, non-judicial or administrative action is taken against the individual. In compliance with DOD policy, an individual will still remain entered in the Defense Clearance Investigations Index (DCII) to track all reports of investigation.

//NOTHING FOLLOWS//