

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20240008589

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Legal Brief, Undated
- Veterans Affairs Rating Decision Letter
- Army Regulation (AR) 15-6 Investigation, dated 2 May 2023
- Commander's Inquiry, dated 20 April 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enlisted Record Brief (ERB)
- Documents from his Official Military Personnel File (OMPF)
- Commander's Notification Memorandum, dated 30 October 2023
- Notification of Denial - Qualitative Management program (QMP), dated 29 February 2024
- Law Enforcement Report, dated 11 December 2017
- Character References (6)

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 falsely accused of sexual harassment in 2021. The investigation officer (IO) stated that he did not determine any sexual harassment took place; however, the commander overturned his decision. He was again falsely accused in 2023 and was made to look like a repeat offender. His discharge is affecting future job opportunities.

3. Counsel states, in effect, the following:

a. He respectfully requests the applicant's separation be suspended so he may retire from the United States Army, or in the alternative, that he be granted an Honorable Discharge with a narrative reason for separation of Secretarial Authority. The applicant has been on active duty for over 17 years and has served on four combat deployments to both Iraq and Afghanistan.

b. He was accused of sexually harassing two female Soldiers by asking them about Only Fans accounts. On 12 April 2024, an administrative separation board recommended that he be separated with a characterization of "general, under honorable conditions" under Army Regulation (AR) 635-200, chapter 14-12c. Prior to the proceeding, he requested impeachment documents from the Recorder that go directly to witness credibility and bias. The request was denied, and an objection was made to the legal advisor.

c. A second request was made to review a commander's inquiry into how the previous commander handled his Noncommissioned Officer Evaluation Report (NCOER), and he was told the NCOER would be looked into by his Brigade Commander. Further, the applicant was never given a resolution, and while the Recorder stated that he should have been offered a 1-page summary, no summary was given and the request for the inquiry was denied. This is in direct contradiction to AR 623-3, para 4-5(j).

d. Lastly, there was also an objection made to the legal advisor since the commander who would have been investigated was on the Recorder's witness list and testified against the applicant. Lastly, the applicant was receiving treatment for combat-related Post-Traumatic Stress Disorder (PTSD), and a myriad of witnesses stated they had no concerns about him should his service continue.

4. The applicant enlisted in the Regular Army on 31 October 2006.

5. On 2 February 2018, he received non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for unlawfully touching (28 November 2017) Specialist [REDACTED] on the thigh with his hand and having wrongfully engaged (29 November 2017) in an unduly familiar relationship with her. The applicant did not appeal, and his punishment included reduction in grade to E-5 (suspended), forfeiture of \$1,645.00 pay, and a written reprimand.

6. The complete facts and circumstances surrounding the applicant's discharge are not available for review. However, the Commander's Notification Memorandum, issued by Alpha Company, 142d Division Sustainment Support Battalion, Fort Bliss, TX, dated 30 October 2023 shows he (Commander) was initiating actions to separate the applicant for Commission of a Serious Offense, under the provisions of AR 635-200, Chapter 14-12c. The reasons for the commander's proposed action are:

a. On or about 3 March 2023, the applicant sexually harassed PVT [REDACTED] a junior enlisted Soldier, by asking her for inappropriate photos.

b. On or about 7 April 2021, he sexually harassed SPO [REDACTED] a junior enlisted Soldier, by asking her if she had an OnlyFans.

7. The applicant was discharged on 6 August 2024, under the provisions of AR 635-200 for Misconduct (serious offense). His DD Form 214 shows he completed 17 years, 9 months, and 6 days of net active service. His service was characterized as under honorable conditions (general).

8. The applicant provides:

a. A Veteran's Affairs Memorandum, dated 19 September 2024, showing he is receiving disability compensation for a 90% rating.

b. Provided numerous successful NCOERs, awards, and several military and civilian diplomas.

c. QMP Selection Board memorandum, dated 29 February 2024. The appellant was notified that his voluntary retirement would be approved for the date requested but would not be later than 1 September 2024.

d. In approximately six letters, the authors attest to the applicant's character, leadership, mentorship, being a true team player, being respectful, having technical skills, being loyal, dependable, trustworthy, and would or have served with him in combat.

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

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 293, the applicant indicated Sexual Assault/Harassment is related to his request. More specifically, the applicant stated that he was falsely accused of sexual harassment. 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 31 October 2006, 2) on 02 February 2018, the applicant received an Article 15 for unlawfully touching a Specialist on the thigh with his hand and

having wrongfully engaged in an unduly familiar relationship with her, 3) the complete facts and circumstances surrounding the applicant's discharge are not available for review. However, the Commander's Notification Memorandum dated 30 October 2023 shows the commander was initiating actions to separate the applicant for Commission of a Serious Offense, under the provisions of AR 635-200, Chapter 14-12c. The reasons for the commander's proposed action were: on or about 3 March 2023, the applicant sexually harassed a Private by asking her for inappropriate photos and on or about 7 April 2021, he sexually harassed a Specialist by asking her if she had an OnlyFans, 4) the applicant was discharged on 06 August 2024 under the provisions of AR 635-200, for Misconduct (serious offense), with a separation code of JKQ and reentry code of '3.'

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 03 November 2006 through 28 March 2024. The applicant presented to BH while deployed on 16 February 2009 with his chief complaint documented as "I think I have a mood/emotion disorder." He reported changes in his behavior, mood swings, isolating himself, decreased appetite, dreams he does not recall and wakes up punching the walls, and noted these changes as having an impact on his work. He further stated he had been experiencing anger, reportedly throwing weapons and disrespecting NCOs at times, and did not want his anger to get out of control. He was not diagnosed with a psychiatric condition and was scheduled for supportive therapy. A diagnosis of Problems Primary Support Group was added on 25 February 2009. At the time of his final appointment on 15 July 2009, it was documented that the applicant reported some improvement in his anger, was getting along with co-workers, and had not had any incidents in the previous two weeks. He was not diagnosed with a BH condition and was encouraged to follow-up with BH upon re-deploying.

d. On 16 November 2009, he presented to medical reporting sleep problems and was referred to BH for further evaluation. He presented to the medical on 23 September 2010 requesting medication for Attention Deficit Disorder (now known as Attention Deficit/Hyperactivity Disorder (ADHD)). It was documented that he reported a history of poor memory and short attention span for years, noting he had a history of treatment for ADHD in childhood. He was referred to BH for evaluation and treatment [*Advisor's Note: there is no documentation that he followed-up with BH regarding these concerns*]. On 02 May 2012, the applicant underwent a Mental Status Evaluation (MSE) as he was DA selected as a Drill Sergeant. It was documented that he denied having any BH history, to include PTSD or TBI concerns, and denied alcohol or substance use issues. He was not diagnosed with a condition and deemed fit for duty.

e. The applicant presented as a walk-in on 16 December 2013 as referred by his NCO following a negative counseling for an incident that occurred with his girlfriend and was being handled through the civilian sector. His diagnosis was documented as Occupational Problem. He presented to the Family Advocacy Program (FAP) on 19 December 2013 due to an unrestricted domestic abuse report as the alleged offender of intimate partner abuse and child emotional abuse. The diagnosis was documented as Other Specified Family Circumstances. The Case Review Committee (CRC) results were unavailable for review; however, it was documented that he was referred for individual, couples, and group therapy (Men's Group and a psychoeducational group). The applicant engaged in treatment through the FAP clinic through 09 May 2014. His diagnoses during this period of treatment were documented as Other Specified Family Circumstances, Partner Relational Problem, Adjustment Disorder with Depressed Mood, and Parent/Child Relational Problem.

f. Review of the applicant's records shows that he was screened for BH-related concerns numerous occasions throughout his career during in/out processing, pre-and-post deployment health assessments, and clearance for schools (e.g., Drill Sergeant and Special Forces SERE physical). He consistently screened negative for any BH concerns, to include depression, PTSD, and suicidal ideation.

g. A review of JLV shows the applicant is 100% service-connected through the VA, 70% for PTSD. The applicant underwent a Compensation and Pension (C&P) evaluation on 14 May 2024 showing he was diagnosed with PTSD. It was documented that he deployed four times, three times to Iraq (2008; 2016-2017; and 2018-2019) and once to Afghanistan (2011-2012). The stressor associated with his diagnosis was documented as occurring during deployment in 2011-2012 wherein his team went to collect "forensics" from vehicles that were blown up. His symptoms were documented as depressed mood, anxiety, suspiciousness, and panic attacks, which impact his functioning. It was also noted that he has chronic sleep impairment, mild memory loss, flattened affect, impaired judgment, disturbances of motivation and mood, difficulty adapting to stressful circumstances, and neglect of personal appearance and hygiene.

h. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and service-connected through the VA with PTSD, which is a potentially mitigating BH condition. Review of the applicant's in-service medical records shows that he was diagnosed with several psychosocial issues (Other Specified Family Circumstances, Partner Relational Problem, and Parent/Child Relational Problem, Problems Primary Support Group) and Adjustment Disorder with Depressed Mood, which do not constitute mitigating conditions [*Advisor's Note: Adjustment Disorders that are acute (i.e., less than 6 months) do not constitute mitigating conditions*]. However, this Advisor would contend that the applicant's sexual misconduct is not mitigated by his diagnosis of PTSD.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected for PTSD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected for PTSD through the VA. Service connection establishes that the condition existed in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the applicant's in-service medical records were void of a mitigating BH diagnosis or treatment history. The applicant has been diagnosed and service-connected through the VA with PTSD, which is a potentially mitigating BH condition. However, sexual misconduct is not part of the natural history and sequelae of PTSD. Furthermore, PTSD does not interfere with the ability to distinguish between right and wrong and act in accordance with the right. As such, BH mitigation is not supported.

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 request and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct for sexual assault/harassment. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. In addition, the Board concurred with the medical review that the applicant's misconduct leading to his separation was not mitigated based on the following liberal consideration:

(a) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected for PTSD through the VA.

(b) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected for PTSD through the VA. Service connection establishes that the condition existed in service.

(c) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the applicant's in-service medical records were void of a mitigating BH

diagnosis or treatment history. The applicant has been diagnosed and service-connected through the VA with PTSD, which is a potentially mitigating BH condition. However, sexual misconduct is not part of the natural history and sequelae of PTSD. Furthermore, PTSD does not interfere with the ability to distinguish between right and wrong and act in accordance with the right. As such, BH mitigation is not supported.

2. Therefore, the Board determined that 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 |
| ■ | ■ | ■ | 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.

5/5/2025

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. 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. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious

Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense. First time offenders below the grade of sergeant, and with less than 3 years of total military service, may be processed for separation as appropriate.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//