

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009224

APPLICANT REQUESTS:

- upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable
- a different narrative reason for separation, presumably more favorable

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

- DD Form 149 (Application for Correction of Military Record), 12 April 2024
- Legal Brief, 15 April 2024
- Self-Authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 July 1984
- character reference statements (four)
- Department of Veterans Affairs packet (rating decision and claim)
- Wilkie Memorandum
- Hagel Memorandum
- Kurta Memorandum
- Official Military Personnel File (OMPF) documents

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 court-martialed under false allegations, the court was unable to find him guilty of multiple charges because of his innocence; however, he was found guilty of impersonating an officer, despite the lack of evidence this was the charge that stuck. He was sent to Kansas, where he encountered others making passes at him, he fought back, and things began to get difficult, he tried to ignore all of it; however, he was brutally raped. He never reported this due to being threatened. He was falsely accused of a crime he did not commit and then he was victimized. When being

discharged, he was informed he would receive a under honorable conditions (general) discharge; however, he was told he was undeserving. After his discharge, his marriage fell apart, he questioned himself and his manhood, his identity, everything, and he was withdrawn. He believes with upgrade and removal of the narrative reason for reason it will feel like a voice for himself has finally been heard.

3. Counsel provides a 14-page legal brief available for the Board's review in its entirety in the supporting documents.

a. Counsel reiterates the applicant's personal statement, his military service, the accused court-martial, his toxic leadership, the rape he endured, his behavior of lying about his wedding band in the mail leading to his discharge. Counsel describes the applicant's life since discharge, from owning a limousine business to his declining health issues.

b. Counsel argues the applicant's punishment is too harsh, requesting a discharge upgrade is necessary to provide him relief. He references the Wilkie, Kurta, and Hagel memorandums in support of the applicant's request, additionally adding the applicant's experiences excuse and outweigh his discharge.

4. On his DD Form 149, he annotates sexual assault/harassment is related to this request.

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

a. He enlisted in the Regular Army on 10 February 1983, for a 3-year period.

b. The highest rank he attained was private/E-2.

c. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 18 November 1983, for failing to go to his prescribed appointed place of duty on or about 22 September 1983. His punishment imposed was reduction to the grade of E-1, forfeiture of \$133.00 for one month, restriction for 14 days, and extra duty for 14 days.

d. General Court-Martial Order Number 5, dated 1 May 1984, shows the applicant was convicted for wrongfully, willfully, and unlawfully impersonating a commissioned officer of the U.S. Army by publicly wearing the uniform and insignia of rank appearing to be that of a First Lieutenant, such conduct being prejudicial to good order and discipline in the armed forces. The court sentenced him to confinement at hard labor for six months and forfeiture of \$395.00 per month for six months. The sentence was adjudged on 4 February 1984. The convening authority approved and ordered the sentence to be duly executed.

e. On 10 July 1984, the applicant's immediate commander formally recommended him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Misconduct). As the specific reasons for the request, the commander noted the applicant's record of discreditable acts and conduct were prejudicial to good order and discipline.

f. On 19 July 1984, he consulted with counsel and was advised of the basis for the contemplated separation action, the rights available to him, and the effect of a waiver of his rights. He waived consideration of his case by an administrative separation board and a personal appearance before the board. He elected to submit a statement in his own behalf, wherein he requested that the commander not put another bad mark above his head, explaining he had a family to take care of.

g. On 27 July 1984, the separation authority approved the recommended separation action and further directed he be furnished an UOTHC discharge.

h. He was discharged on 30 July 1984, under the provisions of AR 635-200, paragraph 14-12b, for misconduct- pattern of misconduct. His service was characterized as UOTHC. He served 11 months and 27 days of net active service this period with time lost from 4 February 1984 to 26 July 1984.

6. He and his counsel additionally provide the following:

a. Four-character reference statements, which summarize the applicant's character as selfless, resilient, optimistic, kind, generous, a father who the children admire, a hard worker, and influential. They describe him as a father and a friend, a father who strives to push his children and grandchildren, while listening to his stories of the military and knowing of his courage for what he endured.

b. Department of Veterans Affairs documentation showing an administrative decision for health care and related benefits, along with a summary summarizing the applicant's time in service with his court-martial charges, stating the court-martial was prejudicial and discriminated against him. He believes since the court-martial charges his life has never been the same.

c. Wilkie, Hagel, and Kurta memorandums along with approximately 323 pages from his OMPF.

7. On 3 February 2025, in the processing of this case, the U.S. Army Criminal Investigation Division (CID), searched their criminal file indexes, which revealed no CID and/or Military Police sexual assault records pertaining to the applicant.

8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable and a different narrative reason for separation. He contends he experienced sexual assault/harassment (MST) that mitigates his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 10 February 1983.
- The applicant accepted NJP on 18 November 1983 for failing to go to his prescribed appointed place of duty on or about 22 September 1983.
- General Court-Martial Order, dated 1 May 1984, shows the applicant was convicted for wrongfully, willfully, and unlawfully impersonating a commissioned officer of the U.S. Army by publicly wearing the uniform and insignia of rank appearing to be that of a First Lieutenant, such conduct being prejudicial to good order and discipline in the armed forces. This document also indicated he was found not guilty of two specifications of rape.
- There are several documents related to an investigation and the applicant's allegation that his wedding ring was stolen. A "Rights Warning Procedure Waiver Certificate" dated 24 May 1984 showed that the applicant was suspected/accused of "False Swearing/False Statement/Damage to Government Property."
- On 10 July 1984, the applicant's immediate commander formally recommended him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Misconduct).
- The applicant was discharged on 30 July 1984 and completed 11 months and 27 days of net 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 brief, prepared by his attorney, explains that the applicant was charged with sexual assault and impersonating an officer, but there was insufficient evidence to find him guilty of the sexual assault charge. He was then "written up" for "impersonating an officer." The second incident of misconduct was related to his claim of a stolen wedding ring when he tried to mail it home to his wife, and this incident occurred "a few days after Mr. Poke had been brutally sexually assaulted by his Platoon and Team Leader."

He also asserts that the Platoon leader “told Mr. Poke how he wanted to take his wedding ring as a reminder of the event,” resulting in panic and an attempt to send the ring back to his wife for safekeeping. A Report of Medical Examination dated 26 October 1983 showed no indication of any psychiatric symptoms. A Report of Mental Status Evaluation dated 26 July (illegible year) indicated the applicant met retention standards and had the capacity to understand and participate in the proceedings. Documentation from a social worker evaluation on 1 March 1984, as part of the process for entering confinement, showed the applicant to have “fair insight/judgment” and “seems motivated with a positive attitude to training and RTD.” He denied suicidal or homicidal ideation. There was insufficient evidence that the applicant was diagnosed with PTSD or any 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 an Initial PTSD Disability Benefits Questionnaire dated 31 July 2019, which showed that although the applicant endorsed “a few post-service PTSD symptoms,” he did not meet criteria for any mental health diagnosis. He did report trauma associated with an MST, but he had difficulty with recall of details or other memories due to having had a stroke in 2000. No diagnosis was rendered.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition while on active service or post-discharge. However, he asserts a mitigating behavioral health experience, MST.

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 experienced MST prior to the incident related to the lost ring, which resulted in his discharge associated with a pattern of misconduct. The applicant did not provide any mental health records, and a VA Compensation and Pension evaluation in 2019 resulted in no diagnosis. However, it did document that the applicant reported an MST experience.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a sexual assault/MST while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. There is insufficient evidence, beyond self-report, of any mental health condition, both while on active service and post-discharge. However, the applicant asserts a mitigating experience, MST, which occurred prior to the third incident resulting in his discharge related to Pattern of Misconduct described as “discreditable acts and conduct were prejudicial to good order and discipline.” The applicant’s assertion that he

was attempting to protect his wedding ring following a sexual assault would be a natural sequela to having experienced MST, which would warrant consideration of mitigation. As to the misconduct of failing to go to his prescribed place of duty and impersonating a commissioned officer, these events occurred prior to the MST experience; therefore, they would not be considered mitigatable.

g. The applicant contends he had an MST that mitigates his misconduct, and per Liberal Consideration his assertion of MST alone is sufficient for the board's consideration.

BOARD DISCUSSION:

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was separated for a pattern of misconduct and contends he experienced sexual assault/harassment, that mitigates his misconduct. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence that the applicant was diagnosed with PTSD or any psychiatric condition while on active service.

a. The Board found no error or injustice in the separation proceedings or the narrative reason for separation assigned during separation processing. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

b. The Board determined the narrative reason for separation the applicant received upon separation was appropriate and not in error and therefore no relief was appropriate.

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.

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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. 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, United States 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 635-5-1 (SPD) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKM" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12b, by reason of misconduct.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.
 - b. 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.

c. 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.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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