

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009386

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his bad conduct discharge (BCD), in addition to a change in his separation code and reentry code.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), 2 May 2024
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 2 May 2024
- Self-authored statement, undated
- NBG Form 22 (Report of Separation and Record of Service) effective date 30 August 1998
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 28 August 2000

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 AR20200005131 on 31 March 2021.

2. The applicant states due to the circumstances of being a victim of military sexual trauma, he has significant mental health issues including post-traumatic stress disorder (PTSD). Due to these stressors, he made risky decisions and did not want to continue to serve and eventually went absent without leave (AWOL).

3. On his DD Form 149, the applicant indicates PTSD and sexual assault/harassment are related to his request.

4. He enlisted in the Nevada Army National Guard on 20 February 1998. He was ordered to perform initial active duty for training (IADT) on 27 April 1998.

5. DA Form 4187 (Personnel Action), 3 August 1998, shows his duty status was changed from "present for duty" to "AWOL" effective 1 August 1998.
6. DA Form 4187, 31 August 1998, shows his duty status was changed from AWOL to "dropped from unit rolls (DFR)" effective 31 August 1998.
7. His NGB Form 22 shows he was DFR of the Army and the United States Army Reserve (USAR) and transferred to the USAR Control Group (Reinforcement) on 30 August 1998 after completing 5 months and 11 days of total service for pay.
8. Headquarters, U.S. Army Armor Center and Fort Knox Orders 307-00100, on 3 November 1998 assigned him to the Special Processing Company, U.S. Army Personnel Control Facility, Fort Knox, KY on 26 October 1998.
9. DA Forms 4187 shows his duty status was changed from "present for duty" to "Confined Military Authorities" effective 26 October 1998 and his duty status changed from "confined military authorities" to "present for duty" effective 2 November 1998.
10. Special Court-Martial Order Number 1, issued by Headquarters, U.S. Army Armor Center and Fort Knox, KY, adjudged on 26 October 1998, shows he was found guilty of 21 specifications of unauthorized use of a calling card and wrongfully obtaining services, between on or about 31 May 1998 and 27 June 1998, and of AWOL terminated by apprehension from 1 August 1998 to 1 September 1998. He was sentenced to issuance of a BCD, confinement for 100 days, and forfeiture of \$617.00 pay per month for four months. The approval authority ordered only so much of the sentence as provides for a BCD, confinement for 75 days, and forfeiture of \$617.00 pay per month for four months.
11. The sentence was approved on 4 January 1999 and the record of trial was forwarded to the U.S. Army Court of Criminal Appeals for appellate review.
12. The U.S. Army Court of Criminal Appeals affirmed the findings and sentence in the applicant's case on 11 June 1999.
13. Special Court-Martial Order Number 21, issued by Headquarters, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 12 May 2000, noted that his sentence had been affirmed and ordered the BCD be duly executed.
14. The applicant was discharged on 28 August 2000, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial in the rank/grade of private/E-1. His DD Form 214 shows:
 - he completed 2 years, 2 months, and 25 days of active service

- his character of service as "Bad Conduct"
- his separation code as JJD
- his reentry code as 4
- he had lost time from 1 August 1998 – 30 August 1998 (a period of 30 days) and from 26 October 1998 – 1 November 1998 (a period of 7 days)

15. On 31 March 2021 in Docket Number AR20200005131, the ABCMR denied his request for correction of his records to show his BCD discharge be upgraded. Based on the documentary evidence he provided, the Board found there was insufficient evidence to show his any mitigating evidence/factors for his serious misconduct to weight a clemency determination.

16. The Army Review Boards Agency (ARBA) requested any information regarding to the applicant from the Criminal Investigation Division (CID) pertaining to his contention of being sexually assaulted and/or harassed. On 5 February 2025, CID noted their records did not contain any information or investigation concerning the applicant.

17. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from Bad Conduct Discharge (BCD) to something more favorable. 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 Nevada National Guard on 20 February 1998 and entered active duty for training on 27 April 1998.
- Special Court-Martial Order Number 1, issued by Headquarters, U.S. Army Armor Center and Fort Knox, KY, adjudged on 26 October 1998, shows he was found guilty of 21 specifications of unauthorized use of a calling card and wrongfully obtaining services between 31 May 1998 and 27 June 1998, and of AWOL terminated by apprehension from 1 August 1998 to 1 September 1998.
- The applicant was discharged on 28 August 2000 and completed 2 years, 2 months, and 25 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

applicant asserts he was hazed, beaten, and violated to the point of “blood coming from my rectum,” and he stated this traumatic event resulted in his going AWOL. He also contends he has mental health issues, including PTSD, as a result, which has had an impact on his social and occupational functioning. The application was void of any mental health or medical records. There was insufficient evidence that the applicant was diagnosed with PTSD or another 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 no history of mental health related treatment or diagnoses while on active service. The applicant is eligible for VA services only as “humanitarian emergency,” and records showed he met with a social worker through the Clark County Detention Center on 13 December 2016 to learn of any services he would qualify for upon his release. The next encounter was in January 2020, and the applicant was educated about the Veteran Justice Outreach Program. He has had five encounters with this program with the most recent on 20 March 2024, and they have provided him with assistance in obtaining his DD214 and information about ABCMR.

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 that fully 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 experienced MST resulting in PTSD. There are no available mental health records during active service or post-discharge that indicate the presence of any mental health symptoms or diagnoses.

(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, and he asserts experiencing MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and there were no post-discharge records provided. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition on active service, the applicant asserts a mitigating BH experience, MST. As there is an association between MST and avoidant behavior, such as going AWOL, there is a nexus between his experience of MST and this misconduct. However, there is no nexus between the applicant’s misconduct related to 21 specifications of unauthorized use of a calling card and wrongfully obtaining services. He contends that these charges were incurred by

others in his unit, and the MST assault occurred as a result of his “poor leadership.” Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the board could consider partial mitigation of the AWOL charge.

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, supporting documents, evidence in the records, 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 conviction by court-martial for 21 specifications of unauthorized use of a calling card and wrongfully obtaining services, between on or about 31 May 1998 and 27 June 1998, and of AWOL terminated by apprehension from 1 August 1998 to 1 September 1998. The Board found no error or injustice in the separation proceedings. Based on the applicant's misconduct, concurrence with the medical advisor's review finding insufficient evidence to support to support the applicant had a mental health condition that fully mitigates his misconduct, the Board concluded an upgrade of his bad conduct discharge and amendment of his separation and reentry codes was not warranted.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he experienced MST resulting in PTSD. There are no available mental health records during active service or post-discharge that indicate the presence of any mental health symptoms or diagnoses.

(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, and he asserts experiencing MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and there were no post-discharge records provided. While there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition on active service, the applicant asserts a mitigating BH experience, MST. As there is an association between MST and avoidant behavior, such as going AWOL, there is a nexus between

his experience of MST and this misconduct. However, there is no nexus between the applicant's misconduct related to 21 specifications of unauthorized use of a calling card and wrongfully obtaining services. He contends that these charges were incurred by others in his unit, and the MST assault occurred as a result of his "poor leadership." Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the board could consider partial mitigation of the AWOL charge.

3. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 amendment of the ABCMR decision rendered in Docket Number AR20200005131 on 31 March 2021.


X //SIGNED//

CHAIRPERSON
Signed by:

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. It is not an investigating agency. 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 evidence.
2. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.
3. Title 10, U.S. Code, Section 866: Article 66 (Review by Court of Criminal Appeals), directs each Judge Advocate General to establish a Court of Criminal Appeals for the purpose of reviewing court-martial cases.
4. Article 71(c) of the UCMJ stipulates that if a sentence extends to death, dismissal, or dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is final judgment as to the legality of the proceedings. A judgement as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel:
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial,

after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the Reserve. The regulation provides that prior to discharge or release from active duty individuals will be assigned Reenlistment Eligibility (RE) codes based on their service records or the reason for discharge. Chapter 3 of this regulation prescribes basic eligibility for prior service applicants for enlistment. Table 3-1 includes a list of the RE codes, and states:

- an RE code of "1" applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- an RE code of "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable; they are ineligible unless a waiver is granted
- an RE code of "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations, which identify reasons for and types of separation from active duty. The separation code "JJD" is the correct code for Soldiers separating under Army Regulation 635-200, chapter 3, for court-martial (other).

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the separation code and a corresponding RE code. The table in effect at the time of his discharge shows the separation code of "JJD" has a corresponding RE code of "4."

9. 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.

10. 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 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 misconduct that led to the discharge.

11. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs, on 25 July 2018, 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//