

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009431

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record).

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, in effect, he was sexually assaulted while in basic training for the Army National Guard (ARNG). When he went to reenlist for the Regular Army (RA), he was sent to the transition point to wait on his port call to Germany and was in the same building in New Jersey with two of the people who assaulted him. The reason it took so long for him to report this is due to the shame and guilt he carries which has caused him hardship and pain. One weekend he went home and never returned to the transition point.
3. The applicant performed active-duty training as a member of the ARNG from 19 November 1984 to 28 March 1985. He was awarded military occupational specialty 76Y (Unit Supply Specialist).
4. On 1 October 1987, he reenlisted in the U.S. Army Reserve and on 13 October 1987, he was discharged from the Delayed Entry/Enlistment Program and entered active duty in the RA.
5. On 11 May 1988, court-martial charges were preferred against the applicant for two specifications of absenting himself from his organization (42nd Adjutant General Battalion (Reception), Fort Dix, NJ), from 15 December 1987 to 31 December 1987 and from 11 January 1988 to 15 April 1988.

6. The applicant's record contains a Personnel Control Facility Interview Sheet dated 18 April 1988, in which the applicant stated he went absent without leave because he had problems at home with his alcoholic mother. He had gone home for the weekend and discovered there was a problem.
7. On 11 May 1988, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct or dishonorable discharge, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a request for discharge, and the procedures and rights available to him. Following consultation with legal counsel, he requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.
8. In his request for discharge, he acknowledged he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He understood by requesting a discharge he was admitting guilt to the charges against him or of lesser-included offenses that also authorized the imposition of a bad conduct discharge or a dishonorable discharge. He acknowledged he understood if his discharge request were approved, he may be deprived of many or all Army benefits. He acknowledged he may be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws. The applicant elected not to make a statement on his own behalf.
9. On 12 May 1988, his immediate commander recommended approval of his request with the issuance of a discharge under other than honorable conditions.
10. On 6 July 1988, the separation authority approved the applicant's request for discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10, with a discharge under other than honorable conditions. On 2 August 1988, he was discharged accordingly.
11. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged for the good of the service in lieu of court-martial with a characterization of service of under other than honorable conditions. He completed 5 months and 28 days of creditable active service this period and he had lost time from 11 January 1988 to 14 April 1988 and from 15 December 1987 to 30 December 1987.

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

13. The U.S. Army Criminal Investigation Command did not have a Report of Investigation concerning sexual assault/harassment pertaining to the applicant.

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

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of under other than honorable conditions discharge. On his application, the applicant stated that sexual assault/harassment was 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 performed active-duty training as a member of the ARNG from 19 November 1984-28 March 1985; 2) On 1 October 1987, the applicant reenlisted in the U.S. Army Reserve, and on 13 October 1987, he was discharged from the Delayed Entry/Enlistment Program and entered active duty in the Regular Army; 3) On 11 May 1988, court-martial charges were preferred against the applicant for two specifications of absenting himself from his organization from 15-31 December 1987 and 11 January-15 April 1988; 5) The applicant was discharged on 2 August 1988, Chapter 10- for the good of the service in lieu of court-martial. His service was characterized as under other than honorable conditions. He completed 5 months and 28 days of creditable active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant indicated on this application that sexual assault/harassment was related to his request to upgrade his discharge. In his narrative description, he reported being sexually assaulted during basic training. The applicant stated he encountered the individuals, who assaulted him, while stationed temporarily in NJ prior to being sent to Germany. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided evidence the applicant has engaged with the VA since 2018 intermittently for assistance with homelessness and mental health and substance abuse recourses. There is insufficient evidence the applicant has reported to the VA experiencing sexual trauma while on active service or received treatment related to this

type of experience. In addition, the applicant has not been diagnosed with a service-connected mental health condition, including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience which 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 a sexual assault/harassment while on active service, which mitigates his misconduct.

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

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, including PTSD related to his report of experiencing sexual assault/harassment, while on active service. The applicant does contend that he experienced sexual assault/harassment while on active service, and his contention alone is sufficient for the Board's consideration per Liberal Consideration. However, there is insufficient evidence beyond self-report the applicant experienced sexual assault/harassment and a resultant mental health condition, while on active service. He did engage in avoidant behavior such as repeatedly going AWOL, but the presence of misconduct is not sufficient evidence of a mitigating mental health condition or experience.

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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official. Based on this, the Board determined the applicant's UOTHC characterization of service at the time of separation was appropriate and a change is not warranted.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced a sexual assault/harassment while on active service, which mitigates his misconduct.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a sexual assault/harassment while on active service, which mitigates his misconduct.

c. Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, including PTSD related to his report of experiencing sexual assault/harassment, while on active service. The applicant does contend that he experienced sexual assault/harassment while on active service, and his contention alone is sufficient for the Board's consideration per Liberal Consideration. However, there is insufficient evidence beyond self-report the applicant experienced sexual assault/harassment and a resultant mental health condition, while on active service. He did engage in avoidant behavior such as repeatedly going AWOL, but the presence of misconduct is not sufficient evidence of a mitigating mental health condition or experience.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. Paragraph 3-7b states 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.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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 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.

4. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. The ABCMR is not an investigative body.

//NOTHING FOLLOWS//