

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009478

APPLICANT REQUESTS: upgrade of his under other than honorable condition discharge and change in the narrative reason for separation from for the good of the service – in lieu of court-martial to something else.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-0781a (Statement in Support of Claim for Service Connection for Post Traumatic Stress Disorder (PTSD) Secondary to Personal Assault (available for the Board's review in supporting documents)
- Self-authored statement addressed below (Statement is available for the Board's review in supporting documents)
- (4) Character letters describing him as hard working, steadfast, a helper, responsible, compassionate, trustworthy and reliable (the letters are available for the Board's review in supporting documents)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- AL Institute for BH, 15 May 2024, regarding psychological and behavioral state of the applicant at time of discharge

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 a self-authored statement his time in Germany his unit went to the field to train live fire drills and maneuvers. When they returned from the field the company had a cookout. He left early because he had to be on duty at 4am for charge of quarters.
  - a. While he was in his bed asleep, he was attacked and assaulted by another service member. He was overpowered and beaten until he was unconscious. He was

sodomized until his roommate intervened. His roommate got him medical attention where he regained consciousness.

b. His chain of command was aware of the assault, and he was subjected to harassment and public humiliation. He has a psychological breakdown and attempted suicide which resulted in him being placed in a mental ward for treatment. He was transferred to another unit and the humiliating treatment followed him. He began to lash out and drank heavily to get the shame and guilt out of his head.

c. His chain of command would not allow him to make any appointments with mental health. Instead, they wrote him up for everything. He was accused of starting a fire in the barracks. He was offered a discharge in lieu of a court martial.

d. Since discharge he has struggled with severe depression. Intrusive memories that cause intense panic, nightmares related to the sexual assault and an intense level of hypervigilance. He has any outbursts with little to no provocation.

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

a. He enlisted in the Regular Army on 7 January 1983.

b. He was assigned to Germany on 23 April 1983.

c. On 14 December 1983, he received non-judicial punishment (NJP) for on or about 1 October 1983, was drunk and disorderly in command. He was reduced to E-2.

d. On 26 January 1984, he received NJP for on or about 11 December 1983, wrongfully use provoking words towards another service member. He was reduced to private/E-1. He appealed the punishment, and his appeal was denied on 6 February 1984.

e. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 17 September 1984, for:

- on or about 16 August 1984, wrongfully have in his possession a switchblade knife
- on or about 16 August 1984, commit an assault upon Specialist R.B. by removing a knife from his pocket, opening the blade, and raising it above his head in a threatening manner, with a means likely to produce grievous bodily harm
- on or about 16 August 1984, be drunk and disorderly

- f. On 26 September 1984, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial.
- g. His chain of command recommended approval and recommended an under other than honorable conditions discharge.
- h. On 17 October 1984, the separation authority approved separation under the provisions of AR 635-200, chapter 10. He directed his character of service be under other than honorable conditions.
- i. Accordingly, he was discharged on 29 October 1984, under other than honorable conditions. His DD Form 214 shows he completed 1 year, 9 months, and 23 days net active service this period.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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

6. 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 change to the narrative reason for separation. He contends he experienced sexual assault/harassment (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 7 January 1983. He was assigned to Germany on 23 April 1983.
  - On 14 December 1983, he received NJP for on or about 1 October 1983 being drunk and disorderly in command. On 26 January 1984, he received NJP for on or about 11 December 1983, wrongfully using provoking words towards another service member.
  - A Charge Sheet dated 17 September 1984 showed that court martial charges were preferred against the applicant for: wrongfully having in his possession a switchblade knife; committing assault on a Specialist by removing the knife from his pocket and raising it above the head in a threatening manner; and being

drunk and disorderly. He voluntarily requested discharge for the good of the service under AR 635-200, chapter 10, in lieu of court-martial.

- The applicant was discharged on 29 October 1984 and completed 1 year, 9 months, and 23 days net active service this period.

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 sexually assaulted by another service member and was severely beaten resulting in a mild traumatic brain injury (TBI). He discussed being harassed and humiliated, which led to a suicide attempt and hospitalization. He indicated MST as an issue or condition related to his request. The application included a letter from Alabama Institute for Behavioral Health and Research, and the author indicated the applicant had been sexually assaulted resulting in PTSD and a pattern of conduct that is consistent with this experience. 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 the applicant is 70% service connected for PTSD since May 2024. The applicant was initially seen in mental health at VA in November 2024, and he reported symptoms of anxiety and a history of MST. He requested a community care referral to see a therapist who had been treating him over the previous two months, and this was approved. He was also started on medications for mood and sleep, and in February 2025 he requested a community care referral for this service as well. These records are not available for review.

e. A review an Initial PTSD Disability Benefits Questionnaire (DBQ) from 11 November 2024 showed that the applicant endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD. He reported a similar, detailed account of the sexual assault/MST, which occurred in Germany, as the primary stressor. The evaluator documented review of several pages of medical and psychiatric records, including an inpatient treatment record from the applicant's time in service.

f. 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.

g. 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 resulting from MST at the time of the misconduct. There were no records available for review from his time in service, but a VA Compensation and Pension (C&P) evaluation

showed that the psychologist was able to review and reference several medical records, including documentation of an inpatient psychiatric admission. The applicant is 70% service connected for PTSD through the VA, and he has utilized community care services for the treatment of PTSD. The applicant provided a letter from his community care provider, and the treating provider diagnosed PTSD associated with MST.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there were no in-service records available for review, the applicant's C&P examination offered some evidence of psychiatric treatment while the applicant was on active service, and the VA has determined he is 70% disabled for PTSD due to MST. The applicant's misconduct related to possessing a switchblade knife and removing it from his pocket could be natural sequelae to mental health conditions associated with exposure to traumatic or life-threatening events and present a mitigating nexus between his mental health condition and his misconduct. Additionally, alcohol use, resulting in disorderly conduct, can be a self-medicating strategy to avoid uncomfortable memories related to trauma exposure, and excessive alcohol use can be a natural sequela to mental health conditions, such as PTSD. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 charged with wrongfully have in his possession a switchblade knife, committing assault upon a Soldier by removing a knife from his pocket, opening the blade, and raising it above his head in a threatening manner, with a means likely to produce grievous bodily harm, and being drunk and disorderly, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board concurred with the medical advisor's review finding sufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Therefore, the Board concluded that the applicant's characterization of service should be upgraded to under honorable conditions (general) and narrative reason changed to Secretarial Authority.

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 had an undiagnosed mental health condition resulting from MST at the time of the misconduct. There were no records available for review from his time in service, but a VA Compensation and Pension (C&P) evaluation showed that the psychologist was able to review and reference several medical records, including documentation of an inpatient psychiatric admission. The applicant is 70% service connected for PTSD through the VA, and he has utilized community care services for the treatment of PTSD. The applicant provided a letter from his community care provider, and the treating provider diagnosed PTSD associated with MST.
- b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced MST while on active service.
- c. Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there were no in-service records available for review, the applicant's C&P examination offered some evidence of psychiatric treatment while the applicant was on active service, and the VA has determined he is 70% disabled for PTSD due to MST. The applicant's misconduct related to possessing a switchblade knife and removing it from his pocket could be natural sequelae to mental health conditions associated with exposure to traumatic or life-threatening events and present a mitigating nexus between his mental health condition and his misconduct. Additionally, alcohol use, resulting in disorderly conduct, can be a self-medicating strategy to avoid uncomfortable memories related to trauma exposure, and excessive alcohol use can be a natural sequela to mental health conditions, such as PTSD. Given the nexus between trauma exposure, avoidance of emotion, and substance use and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |  |
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|-----|-----|-----|----------------------|
| XXX | XXX | XXX | GRANT FULL RELIEF    |
| :   | :   | :   | GRANT PARTIAL RELIEF |
| :   | :   | :   | GRANT FORMAL HEARING |
| :   | :   | :   | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 29 October 1984 to show:

- Item 24: under honorable conditions (general)
- Item 28: Secretarial Authority

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:
  - a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct, or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.
  - b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.
  - 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.
3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted *de novo* review utilizing the Supplemental Guidance.
4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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. 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.

- a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.
- b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.
- c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. 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.

6. Section 1556 of Title 10, United States Code, 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.

//NOTHING FOLLOWS//