

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240009496

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Support letter, R.L.G. a friend of the applicant describes how he changed after he returned from the Gulf War (The complete two-page letter is available for review by the Board in supporting documents)
- Department of Veterans Affairs letter showing he has one or more service-connected disabilities combined for 100% effective 1 December 2023
- National Personnel Records Center letter related to his service record
- Military Personnel Record Jacket documents (15 pages) in support of his claim
- Medical records (130 pages) in support of his claim

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 made a terrible mistake, one time in his life. He was suffering from post-traumatic stress disorder (PTSD). He did not know how to cope with it at the time. He was a model soldier before all of this. He has been a model citizen ever since his discharge. He has never gone to jail or committed a crime, and he supports this country still to this day.
3. A review of the applicant's service records shows:
 - The applicant enlisted in the Regular Army on 6 November 1986; He reenlisted on 29 December 1989, for six years

- He served in Southwest Asia from 29 September 1990 – 20 April 1991
- DD Form 458 (Charge Sheet) shows court martial charges were preferred on 11 January 1995, for:
 - Three counts of Cruelty and Maltreatment towards three different lower enlisted females on various date between December 1993 and June 1994
 - Three counts of sexual intercourse with a woman not his wife; and two counts of indecent acts with two female soldiers
- The complete facts and circumstance related to the applicant's discharge are not available for review however, his DD Form 214 shows:
 - He was discharged on 18 December 1995 under honorable conditions (general) under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c for misconduct
 - He completed 9 years, 1 month, and 13 days net active service this period
 - He was awarded or authorized:
 - Army Commendation Medal
 - Army Achievement Medal (2d Award)
 - Army Good Conduct Medal (2d Award)
 - National Defense Service Medal
 - Southwest Asia Service Medal with 3 bronze service stars
 - Non-Commissioned Officer's Professional Development Ribbon
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Kuwait Liberation Medal

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. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends that he experienced posttraumatic stress disorder (PTSD) that mitigates his misconduct. 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 06 November 1986; 2) He was deployed to Southwest Asia from 29 September 1990 to 20 April 1991; 3) Court-martial charges were preferred against the applicant on 11 January 1995 for three counts of cruelty and maltreatment towards three different lower enlisted females under his command on multiple dates between December 1993 and June 1994 as well as three counts of infidelity and two counts of indecent acts with two female soldiers in the presence of others; 4) The complete facts and circumstance related to the applicant's discharge are not available for review; 5) The applicant was discharged on 18 December 1995, Chapter 14- misconduct. His character of service was under honorable conditions (general). He completed 9 years, 1 month, and 13 days net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and military medical documentation provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. The applicant underwent a mental status evaluation on 08 November 1995 as a part of his administrative separation process. During this evaluation, the applicant was not diagnosed with a mental health condition and was cleared from a psychiatric perspective to participate in the administrative proceedings.

d. A review of JLV indicated that the applicant is 70% service-connected for PTSD (100% service-connected total) resulting from a VA compensation and pension (C&P) examination on 05 February 2021, which also was his initial connection to the VA. The applicant has received VA medical care since that time primarily for physical and orthopedic concerns.

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 mental health condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD during his time in service, which mitigates his misconduct. The applicant has been diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service. The applicant has been diagnosed with service-connected PTSD by the VA.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant has been diagnosed with service-connected PTSD by the VA. However, there is no nexus between the applicant's PTSD and the applicant's misconduct of repeated sexual assault, sexual harassment, and infidelity in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD and; 2) PTSD broadly does not impact one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the serious nature of the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition experience actually excuse or mitigate the misconduct? No,

the Board concluded 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
: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.

//SIGNED//

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. Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon

discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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.

//NOTHING FOLLOWS//