

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240009511

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- self-authored statement, undated
- High School Diploma
- copy of military identification card
- Orders 116-00218, published by Headquarters, United States Army Armor Center and Fort Knox, Fort Knox, KY, 26 April 1995
- DD Form 214 (Certificate of Release or Discharge from Active Duty) 3 May 1995
- Court-ordered name change document
- Passport
- letter, National Personnel Records Center, 26 July 2022
- Department of Veterans Affairs (VA) Health Summaries, 4 pages

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 notes his application is related to post-traumatic stress disorder (PTSD) and Sexual Assault/Harassment. The applicant states, he joined the Army in July 1986. He completed basic combat training and advanced individual training at Fort Sill, OK; he served in military occupational specialty (MOS) 13B (Artillery Cannon Crewmember). He served in Baumholder, Germany; Fort Bragg, NC; the Persian Gulf; and Camp Casey, Korea.

a. He married another service member, in 1989. During his time at Fort Bragg, he and his wife shared a bank account. She wrote bad checks, and he received summary nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). In September 1990, he went to the Persian Gulf. While he was overseas his wife purchased a car in his name without his permission and she overdrafted his checking account. His commander told him to close the bank account and stated that they would deal with the issue once the unit returned to Fort Bragg, NC. When he returned home, he learned his wife was cheating on him; there was a verbal and physical altercation. He received a reprimand and was sent to debt and domestic violence classes. He divorced his wife.

b. He remarried in June 1993, just before being shipped overseas to Camp Casey, Korea. His new wife was also unfaithful; she had an affair in September 1993. His wife had a miscarriage in October 1993 and then started calling the applicant in Korea to ask for money. When he tried to purchase his mid-tour plane ticket, the check bounced. His commander threatened to take away his promotable status to sergeant (SGT)/E-5. He had to borrow money from the credit union to get his bank account out of a negative status and to purchase his round trip ticket home. He found out about his wife's affair during his flight home. When the plane landed in NC, there was a physical and verbal altercation, and the police were involved. He and his wife still wanted to make things work by seeking therapy. He also tried to submit a request for a compassionate reassignment before his leave was finished because his wife did not want him to go back to Korea.

c. He signed into the 19th Replacement Battalion at Fort Bragg. The commander at the 19th Replacement Battalion stated he understood the applicant's situation and allowed the applicant to stay and see if he could get transferred back to Fort Bragg without going back to Korea. His pay was stopped because he did not return to Korea. The loan he took from the credit union resulted in funds being withdrawn from his account due to checks he wrote during his pay freeze. Once the commander of the 19th Replacement Battalion was notified, the applicant received another summarized Article 15. He was behind on rent and other bills, so he and his wife both wrote checks to try to keep a roof over their heads. He could not receive any more military advances, and his check cashing privileges were revoked. He and his wife separated after he caught her having a second affair; he stayed in the apartment until he was evicted.

d. He worked Change of Quarters (CQ) duties so much that he fell asleep on duty and received another summarized Article 15. During this time, he was also working at a car dealership convincing Soldiers to buy cars. One Soldier purchased an expensive car that broke down soon after purchase. The Soldier pointed out the applicant, who was restrained to the unit, and he was later reduced in rank/grade from SGT/E-5 to Specialist (SPC)/E-4. The commander also informed him he would be chaptered out when he returned to Korea. Instead of returning to Korea the applicant went absent

without leave (AWOL). He went to the bus station and bought a ticket to Ft. Knox, KY; then he filed for bankruptcy and got a civilian job.

e. During his time in the Army, he experienced severe trauma. He made poor choices that affected his life and his rank. He has now identified the trauma and is working towards making better life decisions.

3. The applicant enlisted in the Regular Army on 17 July 1986. He completed the following overseas service:

- Germany, 12 November 1986 – 30 May 1990
- Saudi Arabia, 13 November 1990 – 25 March 1991
- Korea, 23 June 1993 - _____

4. On 15 July 1994, he received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for:

- absenting himself from his place of duty on 27 May 1994 and remaining so absent until 7 June 1994
- on or about 29 April 1994, violating a lawful general order by wrongfully engaging in outside employment without the prior written approval of his company commander
- his punishment consisted, in part, of a reduction to SPC/E-4 (effective 19 July 1994).

5. His record contains a series of documents showing he again departed AWOL on 17 August 1994; a nontransferable flag for adverse action was initiated this same day. He was subsequently dropped from the rolls (DFR) on 16 September 1994.

6. The applicant surrendered to military authorities at Fort Bragg, NC on 17 October 1994 and he signed an admission of AWOL, wherein he, knowingly, willingly, and voluntarily declared he was AWOL from 17 August 1994 to 17 October 1994. Additionally, a nontransferable flag was initiated on the applicant for adverse action.

7. On 19 October 1994, the applicant signed a form indicating he did not desire a separation physical, and he provided a statement dated 19 October 1994, wherein he states:

a. On 22 February 1994, he was attached to the 19th Replacement Battalion, Fort Bragg, NC, from Korea, because, during his leave his wife began having complications with her pregnancy.

b. He was released from attachment and put on leave to return to Korea on 22 April 1994, but, on 8 May 1994, the day he was supposed to fly back to Korea, he was pulled off leave because he was under investigation for charges of fraternization and working off post without proper authorization.

c. On 8 June 1994, he received a written counseling for failure to report to duty and subsequently, NJP under the provisions of Article 15, UCMJ for the same. When asked why he failed to report he told Colonel (COL) W_____ he did not report to work because he had not received any pay since 1 March 1994, and he therefore, needed to seek off-post employment because he had bills to pay and a family to support. He went to finance, but finance was unable to help him until they received documentation from Indianapolis, IN. He was directed to work for Command Sergeant Major (CSM) J_____ from 0800 to 1300 daily, while he was still employed off post from 1600 to 2400 each day.

d. Sergeant First Class (SFC) M was harassing him_____ about pulling CQ duty because SFC M_____ did not have enough runners for CQ; the two of them got into an argument about the applicant pulling the duty.

e. Prior to his commander going to the field, he gave the verbal order that the applicant could no longer work off-post because he could not be in two places at one time. He was told he had to decide between being a Soldier and not getting pay or to continue to work off-post even though he was told not to do so. He chose to work off-post because he had to find a way to make ends meet. He is sorry for making this decision, but he felt he had no other choice.

8. The applicant's record does not contain a charge sheet or a separation packet; however, it does include a Criminal Investigation Division (CID) report of investigation dated 21 April 1995, which shows the applicant was the subject of an investigation for making a false official claim, a false official statement, and larceny of private property. The investigative summary states:

a. An investigation established probable cause to believe the applicant committed the offenses of false official statement, false claim, and larceny.

b. The investigation revealed:

(1) at 0630, 22 September 1994, the applicant made a false report to the county Sheriff's Department, alleging his 1990 Honda Accord was stolen.

(2) between 29 September 1994 and 17 October 1994, the applicant submitted a false claim to his insurance company claiming his car was stolen and he was subsequently paid \$10,110.48 for his claim.

(3) On 18 January 1995, a CID source reported the applicant's vehicle was not stolen and that he was storing it at a storage facility.

(4) On 20 January 1995, a Federal search warrant was executed at the applicant's storage facility, at which time, the applicant's vehicle was recovered.

9. On 3 May 1995, the applicant was administratively discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of trial by court-martial. He was reduced to the rank/grade of private (PVT)/E-1, effective 10 April 1995. He received an under other than honorable conditions characterization of service, a separation code of KFS, and a reentry code of 3. Additionally, he had lost time from 27 May 1994 to 6 June 1994 and from 17 August 1994 to 16 October 1994.

10. Army Regulation 635-200, chapter 10, provides for a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of under other than honorable conditions is authorized and normally considered appropriate.

11. The applicant provided four pages of VA Health summaries, printed on 12 March 2024, which show the applicant has a primary diagnosis of PTSD and a secondary diagnosis of Alcohol use disorder and unspecified depression.

12. The applicant claimed, in part, his application was related to sexual assault/harassment. During the processing of this case the Board asked the Criminal Investigation Division to conduct a search of the Army criminal file index for any information related to the applicant having been the victim of sexual harassment/assault; the search yielded no results.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends that his request is related to his experience of PTSD and sexual assault/harassment that impacted the circumstances of his discharge. 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 entered the Regular Army on 17 July 1986; 2) The applicant deployed to Saudi Arabia from 13 November 1990 to 25 March 1991; 3) On 15 July 1994, he received NJP for being AWOL from 27 May 1994 to 07 June 1994 and engaging in outside employment without approval; 4) The applicant went AWOL again from 17 August 1994 until 17 October 1994; 5) On 8 June 1994, he received a written counseling for failure to report to duty; 6) On 21 April 1995, CID generated an investigative report which showed the applicant was under investigation for making a

false official claim, a false official statement, and larceny of private property; 7) The applicant's record does not contain a charge sheet or a separation packet; 8) The applicant was discharged on 03 May 1995, Chapter 10- in lieu of trial by court-martial. He completed 8 years, 7 months, and 7 days of net active service. His military service was characterized as under other than honorable conditions. The applicant had lost time from 27 May 1994 to 6 June 1994 and from 17 August 1994 to 16 October 1994.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA records 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 contends that his request is related to his experience of PTSD and sexual assault/harassment that impacted the circumstances of his discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined. There is insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition. His connection with the VA began on 28 February 2011 when he was connected with psychiatry in preparation for his release from prison. He began more consistent VA involvement beginning on 04 December 2023 that included primary care and mental health care. Per the documentation provided by the applicant, he was diagnosed and treated for PTSD, unspecified depression, and alcohol use disorder by his VA treating provider on 05 March 2024. He maintained consistent appointments and VA connection from that time through his most recent VA mental health encounter on 26 December 2024 for treatment of PTSD; alcohol use disorder, in remission; and unspecified depressive disorder. Within these encounters, no specific link was provided between his PTSD and his military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence beyond self-report the applicant has been diagnosed with symptoms consistent with PTSD by the VA that may partially mitigate some of the known applicant's misconduct. However, there was insufficient evidence available regarding the surrounding the events which resulted in the applicant's discharge to provide an appropriate and complete opinion on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD and sexual assault/harassment, which mitigate his misconduct. The applicant was diagnosed and treated for PTSD, unspecified depression, and alcohol use disorder by his VA treating provider on 05 March 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD and sexual assault/harassment at the time of his active service that mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, the applicant was diagnosed with PTSD and unspecified depression by his VA provider; however, no link was provided between these conditions and his military service. The applicant did go AWOL, and this type of avoidant behavior can be a natural sequelae PTSD and sexual assault/harassment. Yet, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or experience during active service. In addition, there is no nexus between the applicant's reported PTSD and sexual assault/harassment and the applicant's charge of making false statements or larceny in that: 1) These types of misconduct are not a part of the natural history or sequelae of PTSD or sexual assault/harassment and; 2) PTSD and sexual assault/harassment broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Lastly, the complete facts of the applicant's charges leading to discharge were not available for review such that a complete and appropriate opinion is not possible at this time. However, the applicant indicated on his application that PTSD and sexual assault/harassment, during his time in active service were related to his request. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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 evidence of record shows the applicant was charged with being AWOL from 27 May 1994 and remaining so absent until 7 June 1994. The applicant was AWOL again on 17 August 1994 until he surrendered to military authorities on 17 October 1994. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. Additional evidence of record shows there was insufficient evidence available surrounding the events which resulted in the applicant's discharge to show possible behavioral health mitigation as the result of his mental health condition or experience. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD and sexual assault/harassment, which mitigate his misconduct. The applicant was diagnosed and treated for PTSD, unspecified depression, and alcohol use disorder by his VA treating provider on 05 March 2024.

b. Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD and sexual assault/harassment at the time of his active service that mitigate his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? Partially, the applicant was diagnosed with PTSD and unspecified depression by his VA provider; however, no link was provided between these conditions and his military service. The applicant did go AWOL, and this type of avoidant behavior can be a natural sequelae PTSD and sexual assault/harassment. Yet, the presence of misconduct is not sufficient evidence of the presence of a mental health condition or experience during active service. In addition, there is no nexus between the applicant's reported PTSD and sexual assault/harassment and the applicant's charge of making false statements or larceny in that: 1) These types of misconduct are not a part of the natural history or sequelae of PTSD or sexual assault/harassment and; 2) PTSD and sexual assault/harassment broadly do not impact one's ability to distinguish right from wrong and act in accordance with the right. Lastly, the complete facts of the applicant's

charges leading to discharge were not available for review such that a complete and appropriate opinion is not possible at this time. However, the applicant indicated on his application that PTSD and sexual assault/harassment, during his time in active service were related to his request. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

3. Prior to the closing of the Board it was noted the applicant's DA Form 2-1 shows he served in Korea and was not awarded the Korea Defense Service Medal. Additionally, he served in Southwest Asia from 13 November 1990 through 25 March 1991 and was not awarded the Kuwait Liberation Medal – Government of Kuwait, the Kuwait Liberation Medal – Kingdom of Saudi Arabia, Southwest Asia Service Medal with appropriate bronze service stars, and deployment credit in item 18 of his DD Form 214. These awards will be administratively added to his DD Form 214.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTES:

The applicant's DA Form 2-1 shows he served in Korea and was not awarded the Korea Defense Service Medal. Additionally, he served in Southwest Asia from 13 November 1990 through 25 March 1991 and was not awarded the Kuwait Liberation Medal – Government of Kuwait, the Kuwait Liberation Medal – Kingdom of Saudi Arabia, Southwest Asia Service Medal with appropriate bronze service stars, and deployment credit in item 18 of his DD Form 214. Amend the applicant's DD Form 214, ending on 3 May 1995 to show:

- Korea Defense Service Medal
- Kuwait Liberation Medal – Government of Kuwait
- Kuwait Liberation Medal – Kingdom of Saudi Arabia
- Southwest Asia Service Medal with two bronze service stars

- Add in item 18: Service in (SWA) from 13 November 1990 through 25 March 1991

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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate.

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.

d. When a Soldier was to be discharged under other than honorable conditions, the separation authority would direct an immediate reduction to the lowest enlisted grade.

3. 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/NR) 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 on the basis of 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//