

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009708

APPLICANT REQUESTS: an upgrade of his 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)
- Applicant Letter
- Letter, Detroit Veterans Affairs (VA) Regional Office, National Area Supervisor, dated 20 June 2024, requesting the review of the applicant's discharge
- VA Administrative Decision, which states the applicant's discharge from the United States Army was dishonorable for VA purposes and he does not have the basic eligibility to VA benefits

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 enlisted in the service when he was 16 years old. During his stay overseas he was sexually assaulted by two of his superiors. Afterwards he began suffering from post-traumatic stress disorder (PTSD) and his mental stability began to decline.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 7 November 1966.
 - b. He served in Germany from 31 May 1967 to 13 February 1970.
 - c. He accepted non-judicial punishment on:

- 20 November 1967, for on or about 21 October 1967, being disorderly in a public place, to wit: the Military Police Station
- 7 June 1968, for being absent without leave (AWOL) from on or about 0605 hours, 1 June 1968 to on or about 0800 hours, 1 June 1968; he was reduced to private/E-2
- 29 August 1968, for being AWOL from on or about 0605 hours, 20 August 1968 or on or about 0810 hours, 20 August 1968

d. On 13 September 1968, at North Wuerttemberg District, APO, the applicant was found guilty by a special court-martial of:

- Charge I, one specification of on or about 31 August 1968, wrongfully appropriating a green and white Opel of value of about \$125.00
- Charge II, one specification of operating a privately owned vehicle without properly being licensed
- The court sentenced him to confinement for six months, forfeiture of \$73.00 for six months, and reduction to private/E-1

e. He accepted non-judicial punishment on:

- 14 April 1969, for on or about 12 April 1969, failing to go at the time prescribed to his appointed place of duty, to wit: reveille formation and morning work formation
- 7 May 1969, for:
 - on or about 6 April 1969, for operating a passenger car while drunk and causing the vehicle to be involved in an accident; wrongfully and unlawfully leaving the scene of the accident; and operating the vehicle without a driver's license
 - being AWOL from on or about 6 April 1969 to on or about 7 April 1969

f. On 7 August 1970, at Bad Kreuznach, Germany, he was found guilty by a general court-martial of:

- Charge I, one specification of on or about 27 February 1970, stealing a wallet of some value, by means of force and violence
- Charge II, one specification of being AWOL from on or about 18 August 1969 to on or about 2 March 1970
- Charge III, one specification of on or about 4 March 1970, escaping from lawful confinement in the Military Police Detention Facility
- The court sentenced him to be dishonorably discharged, confinement at hard labor for two years, forfeiture of all pay and allowances, and to be reduced to the grade of private/E-1

g. The sentence was approved on 7 August 1970, and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

h. General Court-Martial Order Number 226, issued on 23 February 1971, shows the sentence had been affirmed pursuant to Article 66. The provisions of Article 71(c) had been complied with and the sentence would be duly executed.

i. Accordingly, the applicant was discharged on 15 March 1971. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-1a, as a result of court-martial conviction, in the rank/grade of private/E-1, and his service was characterized as dishonorable. He completed 2 years, 5 months, and 16 days of net active service this period. He had 201 days of lost time under 10 USC, 972 and 491 days lost subsequent to normal expiration term of service.

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

5. 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 under honorable (general). He contends he experienced an undiagnosed mental health condition, including PTSD, and 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 November 1966.
- The applicant served in Germany from 31 May 1967 to 13 February 1970.
- He accepted NJP for: on 21 October 1967, being disorderly in a public place; being AWOL on 1 June 1968 and again on 20 August 1968.
- On 13 September 1968 the applicant was found guilty by a special court-martial of: one specification of wrongfully appropriating a green and white Opel of value of about \$125.00; and one specification of operating a privately owned vehicle without properly being licensed.
- He accepted NJP for: failing to go at the time prescribed to his appointed place of duty on 12 April 1969; for operating a passenger car while drunk and causing the vehicle to be involved in an accident; wrongfully and unlawfully leaving the scene

of the accident; and operating the vehicle without a driver's license on 6 April 1969; and being AWOL from 6 to 7 April 1969.

- On 7 August 1970, he was found guilty by a general court-martial of: Charge I, one specification of on 27 February 1970, stealing a wallet of some value, by means of force and violence; Charge II, one specification of being AWOL from on or about 18 August 1969 to on or about 2 March 1970; Charge III, one specification of on or about 4 March 1970, escaping from lawful confinement in the Military Police Detention Facility.
- The applicant was discharged on 15 March 1971 and completed 2 years, 5 months, and 16 days of 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 during his stay overseas he was sexually assaulted by two of his superiors. Afterwards he began suffering from PTSD, and his mental stability began to decline. He indicated PTSD and MST as issues or conditions related to his request. A Department of Veterans Affairs Administrative Decision letter (undated) showed that the applicant's discharge is considered dishonorable for VA purposes. 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 record of the applicant.

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 condition or experience that partially 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 had an MST experience that resulted in PTSD at the time of the misconduct. There were no mental health records available for review.

(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 attributed this to 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 no mental health records were provided post-discharge. The applicant asserts a fully mitigating

experience, MST, and there is a nexus between his experience of MST and his misconduct related to being AWOL or failing to be at his appointed place of duty. However, there is no nexus between his asserted experience of MST resulting in PTSD and his misconduct related to stealing by means of force and violence, escaping from lawful confinement, and behaviors associated drunk driving resulting in an accident: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions, including MST, do not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition resulting from MST that mitigates his misconduct, and per Liberal Consideration his assertion of MST alone is sufficient for the board's consideration.

BOARD DISCUSSION:

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 being absent without leave, stealing a wallet, and escaping lawful confinement. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concurred with the medical advisor's review finding insufficient evidence the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

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

a. Chapter 11 stated a Soldier would be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial, after completion of appellate review and after such affirmed sentence had been orderly duly executed.

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.

3. 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.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Section 1556 of Title 10, U.S. 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//