ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240009937

APPLICANT REQUESTS: in effect, an upgrade of his bad conduct discharge (BCD) and a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- 3-page self-authored statement, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter, The Healing Lift, Dr. TP, 17 May 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC89-08789 on 24 October 1990.

2. The applicant states, in effect:

a. He arrived in October 1981 to Frankfurt, Germany and was assigned to the 574th Personnel Services Company, Hanau, Germany. He experienced physical and mental health issues associated with post-traumatic stress disorder (PTSD) after experiencing a sexual assault. This has caused multiple problems over the years, and he has avoided seeking treatment due to lack of finances, fear, shame, lack of knowledge and trust.

b. He is concerned with his health issues resulting from his service such as nervousness, restlessness, irritability, anger, severe aggression, mood swings, memory and focusing problems, insomnia, nightmares, weight loss, social isolation, destructive behaviors, intimacy with aggressive behavior. His sleep is limited. He tosses and turns throughout the night. He often wakes up to anxiety with his heart racing and must walk outside no matter what time it is. His bedroom makes him feel trapped, confined and claustrophobic. He has caught himself talking out loud and arguing with himself. He hallucinates and sees shadows and hears whispers when no one is around.

c. He has intimacy issues and hates being touched especially from behind. He feels rage and anger. He cringes and feels his body tighten up, breathing is labored, and he reacts with a loud yell to stop. He feels dirty, which has made it very difficult for he and his wife to be intimate. He has socially distanced himself from family members and friends out of embarrassment and guilt. He and his wife have 3 sons, their 2 oldest sons and their wives haven't spoken to them in years, they haven't seen their grandchildren either, because of his issues. His relationship with their younger son is difficult and tough.

d. He has always worked odd jobs because of his discharge status, finding a job has been difficult and a challenge throughout the years. He had a guaranteed civil service job but due to his status he was not hired. He completely regrets signing up for the military, and feels it ruined his life and those around him. He signed up with the intention to serve his country honorably, to someday be a proud veteran. His dad served in the Army, so he wanted to follow in his footsteps. He wanted to learn a skill and he viewed the Army as an opportunity to improve himself. He wanted to see the world and serve his country. He wanted the Army to be a career.

e. Unfortunately, he was introduced through peer pressure to the use of drugs to cope with the feelings and emotions he experienced after his sexual assault. He never reported the assault due to shame and didn't want to get discharged. He didn't want anyone to know. He has used alcohol to cope with these issues and drinks alcohol daily and at night when he couldn’t sleep. Frequent thoughts of suicide are often on his mind. He has never shared this with his wife, he feels he has put her and their children through enough. He loves his wife and children and wants to be normal. She has been extremely supportive, understanding and loving throughout their lives together.

3. The applicant enlisted in the Regular Army on 17 June 1981. He served in military occupational specialty 75D (Personnel Records Specialist).

4. Evidence contained in his Official Military Personnel File shows:

a. On 29 June 1983, he was convicted in a trial by general court-martial, of conspiracy, distribution of hashish (3 specifications), use of hashish, and communicating a threat of violence to a Soldier and his family.

b. He was sentenced to a dishonorable discharge, 21 months confinement (12 months suspended), total forfeitures and reduction to grade E-1.

c. On appellate review, a rehearing on the sentence was ordered. At the rehearing, he was sentenced to a bad conduct discharge (BCD), 6 months confinement, forfeiture of $425.00 pay per month for 6 months and reduction to grade E-1.

d. The sentence on rehearing was approved by the convening authority and affirmed by the Court of Military Review.

e. The BCD was executed on 9 October 1987. The applicant was credited with 5 years, 11 months, and 14 days active service with 129 days lost time.

f. He received a mental health evaluation on 3 February 1984 and 12 January 1987. Each noted the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met the retention standards of Chapter 3, Army Regulation 40-501 (Standards of Medical Fitness).

5. The applicant provides a letter to the Department of Veterans Affairs (VA), dated 17 May 2024, from a counseling psychotherapist who opines, in effect:

a. [The applicant] was evaluated for potentially having PTSD because of events that occurred during his time in the U.S. Army. [The applicant] was an active member in the U.S. Army from 1981 to 1987. He is also experiencing symptoms of depression, anxiety, and other mental health issues which have significantly impacted his daily life and well-being. While [the applicant] was an active member in the U.S. Army, he was sexually assaulted by several members of the Army at 18 years of age.

b. These conditions have led to relationship issues, lack of interest in previously enjoyed activities, sleep deprivation, weight loss, substance dependence, suicidal ideation, and intrusive thoughts. He urged the VA to expedite disability benefits for the applicant due to the severity of his mental health issues and the impact on his well-being.

6. On 7 February 2025, a member of the Department of the Army Criminal Investigation Division stated a search of the Army criminal file indexes, utilizing the information provided, revealed no Sexual Assault investigation pertaining to [the applicant] and advised that records at the agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

7. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Under the provisions of 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his bad conduct discharge (BCD). On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Sexual Assault/Harassment are 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 enlisted in the Regular Army on 17 June 1981, 2) he was convicted by a General Court-Martial on 29 June 1983 of conspiracy, distribution of hashish (3 specifications), use of hashish, and communicating a threat of violence to a Soldier and his family, 3) the applicant underwent a mental health evaluation on 03 February 1984 and 12 January 1987 and it was documented that he met retention standards IAW Chapter 3, AR 40-501, 4) he provided a letter from a counseling psychologist dated 17 May 2024 to the Department of Veterans Affairs who stated the applicant was sexually assaulted by several members of the Army at age 18 years old, 5) the applicant was discharged on 09 October 1987 under the provisions of AR 635-200, Chapter 3, section IV, with the reason "As a result of court-martial," separation code of JJD, and reentry code of RE-4, 6) a memorandum from the Department of the Army Criminal Investigation Division shows a search of the Army criminal file indexes revealed no sexual assault investigation pertaining to the applicant.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service records show that the applicant underwent a Mental Status Evaluation (MSE) on two occasions, 03 February 1984 and 12 January 1987 (the reason for the evaluation was not specified). At the time of each evaluation, all domains of the MSE were within normal limits (WNL). The evaluating provider also indicated the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and met retention requirements of Chapter 3, AR 40-501.

d. A review of JLV was void of medical information. There is no documentation available indicating the applicant is service connected through the VA for any conditions and there were no VA medical records available for review. It is of note that his BCD renders him ineligible for VA clinical services.

e. A letter from a counseling psychologist to the Department of Veterans Affairs dated 17 May 2024 documented that the applicant was evaluated for possible PTSD due to events that occurred while he was in the military. More specifically, it was noted

that he was sexually assaulted at the age of 18 years old by several members of the Army. The provider documented that the applicant was diagnosed with several BH conditions at the time of the letter to include PTSD, Problems in Relationship with Spouse or Partner, Generalized Anxiety Disorder, Emotional Lability, Alcohol Use, Unspecified, and Obstructive Sleep Apnea.

f. In an undated self-authored statement, the applicant reported that he was sexually assaulted after arriving to Germany. As a result of Military Sexual Trauma (MST), he reported this has caused multiple problems for him over the years and he has avoided treatment due to lack of finances, fear, shame, and lack of knowledge and trust. He reported experiencing the following symptoms: nervousness, restlessness, irritability, anger, severe aggression, mood swings, memory and focusing problems, insomnia, nightmares, weight loss, social isolation, destructive behaviors, intimacy with aggressive behavior.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD secondary to MST, which is a potentially mitigating BH condition. This Advisor would contend that the applicant's misconduct is partially mitigated by his diagnosis of PTSD secondary to MST.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant's in-service medical records available for review were void of any BH diagnosis or treatment history. He is not service-connected through the VA for any conditions. Since being discharged from the military, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider. Substance use is often a self-medicating behavior, used to avoid and mask symptoms, and this can be associated with the natural history and sequelae of numerous disorders and experiences, to include trauma. As there is an association between self-medicating with substances and trauma, there is a nexus between his use of hashish and his diagnosis of PTSD secondary to MST. However, conspiracy, distribution of hashish, and communicating a threat of violence are not part of the natural history and sequelae of PTSD secondary to MST. Furthermore, PTSD nor MST interfere with one's ability to

distinguish between right and wrong and act in accordance with the right. Thus, partial BH mitigation is supported for his misconduct of use of hashish.

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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical advisory based on the Kurta questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant's in-service medical records available for review were void of any BH diagnosis or treatment history. He is not service connected through the VA for any conditions. Since being discharged from the military, the applicant has been diagnosed with PTSD secondary to MST by a non-VA/civilian BH provider. Substance use is often a self-medicating behavior, used to avoid and mask symptoms, and this can be associated with the natural history and sequelae of numerous disorders and experiences, to include trauma. As there is an association between self-medicating with substances and trauma, there is a nexus between his use of hashish and his diagnosis of PTSD secondary to MST. However, conspiracy, distribution of hashish, and communicating a threat of violence are not part of the natural history and sequelae of PTSD secondary to MST. Furthermore, PTSD nor MST interfere with one's ability to distinguish between right and wrong and act in accordance with the right. Thus, partial BH mitigation is supported for his misconduct of use of hashish.

2. The Board reviewed the medical opinion, which provided sufficient evidence that the applicant has been diagnosed with PTSD secondary to Military Sexual Trauma (MST), a potentially mitigating behavioral health condition. The opinion noted that the applicant's misconduct was partially mitigated by the PTSD diagnosis. However, after thorough

consideration, the Board found insufficient in-service mitigating factors to outweigh the applicant's misconduct, which included conspiracy, distribution of hashish (three specifications), and use of hashish. Additionally, the applicant did not provide any post-service achievements or character letters for consideration in a clemency determination. ABCMR is only empowered to modify the severity of sentences imposed through the court-martial process, and clemency can only be granted if deemed appropriate. While recognizing that many victims of sexual assault may not report incidents, the Board noted that symptoms of MST are sometimes observable prior to separation. Moreover, the Board determined that personal MST statements provided to a non-VA or civilian behavioral health provider are not always corroborated.

3. The Board carefully evaluated the medical opinion, recognizing that the non-VA/civilian behavioral health provider, despite the absence of additional supporting evidence, stated that substance use can be a form of self-medication aimed at masking symptoms of trauma. Given the association between substance use and trauma, the Board considered the potential nexus between the applicant's use of hashish and the diagnosis of PTSD secondary to MST., the Board considered this factor. However, based on the preponderance of evidence, the Board determined that the character of service the applicant received upon separation was neither in error nor unjust. Therefore, while acknowledging the applicant's medical condition, the Board concluded that an upgrade to not was warranted. Therefore, relief is denied.

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.

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. Army Regulation 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides the policies and procedures for separating members with a dishonorable discharge or a BCD. It stipulates that a Soldier will be given a BCD pursuant only to an approved sentence of a general or special court-martial, and that the appellate review must be completed and affirmed before the BCD portion of the sentence is ordered duly executed.

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 provides 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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Under the provisions of 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 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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 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.

5. 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 ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//