

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010203

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge.

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 letter addressed below (Available for the Board's review in supporting documents)
- Agent's Investigation Report page 4 related to the incident in which the applicant was investigated along with page 2 of 4 of question and answers
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Good Conduct Medal orders showing he was awarded his first award
- Promotion board memo showing he attended the promotion board to sergeant
- Additional Duty Appointment showing he was appointed duty as a unit mail clerk
- Security clearance memo showing he held a secret security clearance effective 17 October 2001
- Training Certificates and Awards showing his accolades while in service (Available for the Board's review in supporting documents)
- Medical documents (4 pages) showing he was seen at The Center for Child and Family Psychiatry, P.C. for generalized anxiety disorder, chronic insomnia, nightmares, panic attacks, post-traumatic stress, severe depression, social anxiety disorder, and passive suicidal ideations

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 his self-authored letter in 2003 he made one of the worst decisions of his life and he is still paying for it today. He has no one to blame but himself

for his actions regardless of the situation he was in. He was wrong. He was a great soldier in the US Army with a great career and future ahead of him. He sincerely loved his job as a 68N (Avionics Mechanic) and loved serving his country. He is still very proud for the opportunity he received to serve and would not change it or trade it for the world. It has been 20 years now and he wants to continue to move forward in his life and help motivate and inspire others along their journeys. This is a true testimonial of no matter what you go thru, we can overcome all of life's obstacles. He described throughout the letter:

- The accolades he had achieved in a short period of four years
- The infidelity of his wife at the time
- The living arrangement with his friend
- Returning to Korea and facing charges
- Current family situation and community support

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

- a. He enlisted in the Regular Army on 24 September 1998.
- b. He served in Korea. The timeframe is unknown.
- c. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 5 November 2003, for between on or about 1 August 2003 and on or about 1 September 2003, on diverse occasions, commit the offense of carnal knowledge with K.J.B. and wrongfully have sexual intercourse with K.J.B., a woman not his wife.
- d. On 14 November 2003, 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.
- e. On 18 November 2003, the chain of command recommended approval and recommended an under other than honorable conditions discharge.
- f. On 2 December 2003, 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 and that he be reduced to the lowest enlisted grade.
- g. Accordingly, he was discharged on 13 December 2003, under other than honorable conditions. His DD Form 214 shows he completed 5 years, 2 months and 20 days net active service this period.

4. On 9 March 2012, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly

and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

5. During the processing of this case a Sanitized Report of Investigation (ROI), Military Police Report (MPR) from the U.S. Army Criminal Investigation Command, Quantico, VA was received on 19 April 2025. The summary shows the investigation established probable cause to believe he committed the offense of Carnal Knowledge when he had sexual intercourse with _____ whom he knew to be _____. (The entire investigative report is available for the Board's review in supporting documents).

6. The applicant was provided a copy of this sanitized ROI and provided an opportunity to respond. He did not respond.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions including PTSD, which is related to his request for an upgrade. 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 24 September 1998; 2) Court martial charges were preferred on 5 November 2003 against the applicant for the offense of carnal knowledge and wrongfully have sexual intercourse with a woman not his wife; 3) The applicant was discharged on 13 December 2003, Chapter 10-in lieu of court-martial. His character of service was determined under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian medical records provided by the applicant were also examined.

c. The applicant contends he experienced mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD by the VA. He does not receive service-connected disability for a mental health condition. The applicant provided hardcopy civilian medical documentation from The Center for Child and Family

Psychiatry located in Killeen, TX, dated April 2025. The applicant was seen for an initial assessment. He discussed and was diagnosed with mental health conditions including PTSD. The history of these mental health conditions and their possible connection to his military service was not provided.

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 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 was experiencing mental health conditions including PTSD, which mitigates his misconduct. He provided evidence of being diagnosed with mental health conditions including PTSD in 2025 by a civilian behavioral health provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of infidelity in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD; 2) the applicant's reported mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 consideration for requesting upgrade of discharge characterization of service. The evidence of record confirms that court-martial charges were preferred against the

applicant on 5 November 2003. The charges alleged that between on or about 1 August 2003 and on or about 1 September 2003, on diverse occasions, the applicant committed the offense of carnal knowledge with K.J.B. and wrongfully engaged in sexual intercourse with K.J.B., a woman not his wife. The Board carefully reviewed the applicant's case in conjunction with the medical advisory opinion. The advisory concluded that there is insufficient evidence to support that the applicant had a medical condition or experience that would mitigate or excuse the misconduct for which he was charged. The Board concurred with the medical advisory findings.

2. The record does not establish that the applicant suffered from a condition that impaired his judgment, diminished his responsibility, or otherwise provided a basis for mitigation of the offenses charged. In accordance with governing regulations, the applicant requested and was approved for a discharge under the provisions of Army Regulation 635-200, chapter 10 in lieu of court-martial. The applicant has not provided sufficient evidence to overcome the presumption of regularity in the discharge process or to demonstrate that his separation was improper or inequitable. Based on the foregoing, the Board determined that the applicant's discharge was proper and equitable. The applicant has not met the burden of proof necessary to support the requested relief.

3. 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 asserts he was experiencing mental health conditions including PTSD, which mitigates his misconduct. He provided evidence of being diagnosed with mental health conditions including PTSD in 2025 by a civilian behavioral health provider.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of infidelity in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD; 2) the applicant's reported mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that

mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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. 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//