

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240010875

APPLICANT REQUESTS: an upgrade of his dishonorable discharge to honorable.

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

- (DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement, requesting his DD Form 214 (Certificate of Release or Discharge from Active Duty) reflect separate periods of service based on the attached Statement of Service. He has received Veterans Affairs (VA) educational benefits which he believes demonstrates he is eligible for medical benefits and VA compensation for his honorable service
- Memorandum, Subject: Statement of Service dated 11 August 2022

FACTS:

1. The applicant states:

- Requesting benefits for his honorable time of military service
- His DD Form 214 to show his honorable period of service so he can receive medical benefits

2. A review of the applicant's service record shows

a. He enlisted in the Regular Army on 7 November 2017.

b. On 9 June 2021, at Fort Hood, Texas, the applicant was convicted by a general court-martial (GCM) of:

- Charge I (Article 120) and three specifications of committing sexual acts without the consent of the victim
- Charge II (Article 92) and its specification of violation of lawful general regulation by wrongfully providing alcohol to a person who was not yet 21 years of age
- The court sentenced him to reduction to the lowest enlisted grade of private/E-1, confinement for 30 months, forfeiture of all pay and allowances,

reprimand, and to be discharged from the service with a dishonorable discharge (DD)

c. On 8 July 2021, the convening authority approved only so much of the sentence as provides for 30 months of confinement, reduction to private/E-1, forfeiture of all pay and allowances, reprimand, and except for the DD, ordered the sentence executed.

d. The applicant was discharged with a DD on 15 September 2023. His DD Form 214 shows he was discharged in the rank/grade of private/E-1 as a result of court-martial conviction in accordance with Army Regulation 635-200 (Active Duty Enlisted - Administrative Separations).

e. It also shows he completed 3 years, 11 months, and 19 days of active service; His DD Form 214 also shows:

- Item 26 (Separation Code): JJD
- Item 27 (Reentry Code): 4
- Item 29 (Dates of Time Lost During this Period): 9 June 2021 – 28 April 2023, and he was on excess leave from 1 May 2023 – 15 September 2023

3. 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.

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable discharge. He contends he experienced mental health conditions including posttraumatic stress disorder (PTSD) during his military service, which mitigate 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 07 November 2017; 2) On 9 June 2021, the applicant was convicted by a general court-martial (GCM) of: three specifications of Article 120 for sexual assault and rape and one specification of Article 92 for providing alcohol to a minor; 3) The applicant was dishonorably discharged on 15 September 2023, as a result of court-martial (other). He completed 3 years, 11 months, and 19 days of net active service with time lost between 09 June 2021 and 28 April 2023.

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) was also reviewed. No additional medical records were provided for

review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health disorders including PTSD that mitigate his misconduct. The applicant attended a mental health triage appointment on 04 September 2019 due to family stressors. The applicant did not receive a diagnosis or follow-up care after this appointment. The applicant was cleared from a psychiatric perspective during an initial confinement mental health evaluation on 26 July 2021 where he did not report any mental health symptoms and did not receive a mental health diagnosis. On 08 December 2021 and 09 June 2022, the applicant underwent mental health encounters during confinement for the treatment of PTSD and trauma related nightmares which were allegedly a result of a friend's death in 2019.

d. A review of JLV did not reveal any results. There is insufficient evidence at this time that the applicant has ever been diagnosed with a VA service-connected condition or received any service-connected disability for any mental health condition at this time.

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 experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant was diagnosed and treated for PTSD while in confinement.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service. He was diagnosed and treated for PTSD while in confinement.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is evidence the applicant was diagnosed with PTSD during his military confinement. However, there is no nexus between the applicant's reported mental health conditions including his diagnosed PTSD and the applicant's misconduct sexual assault and providing alcohol to a minor in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD and; 2) the applicant's reported mental health conditions including 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 and criminal nature of the misconduct against other, as well as 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 in 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. Army Regulation (AR) 635-200 (Active Duty Enlisted – Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel and states:

a. 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. 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. Under Other Than Honorable Conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Dishonorable Discharge will be given a bad conduct discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

2. 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.

3. 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.

4. 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.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on

applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. 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.

//NOTHING FOLLOWS//