

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2025

DOCKET NUMBER: AR20240011803

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in item 24 (Character of Service): Honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Written Statement of Explanation from Applicant
- DD Form 214
- VA Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal and Sexual Assault
- VA Form 21-10210 (Lay/Witness Statement) Stepmother
- VA Form 21-10210 (Lay/Witness Statement) Wife
- PTSD Review Disability Benefits Questionnaire
- List of Applicant's Medications

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 effect:

- he requests a discharge upgrade due to military sexual trauma (MST) and PTSD
- he was physically fit, enjoyed his training, and received quarterly awards prior to being sexually assaulted
- the 1SG sexually assaulted, traumatized, and harassed him because he was young, naïve, and gullible
- he did not report the incidents for fear of being killed and embarrassment
- he developed uncontrollable anger and resentment towards his superiors

- he received an Article 15 on more than one occasion for misconduct, insubordination, and conduct unbecoming a Soldier
- he was discharged under honorable conditions (general) at the age of 19
- for years he has suffered internally and dealt with anxiety, insomnia, irritable bowel syndrome (IBS), hypertension, depression, and erectile dysfunction due to the sexual assault
- he also discusses how traumatic it was to see his friend's body on the ground after he was ejected from a vehicle
- once he reviewed his DD214 he thought the type of discharge was an error because his actions and lack of performance was not his fault
- at the time he did not want to relive the trauma to address the matter

3. The applicant provides and the service record shows:

- on 18 September 1984, the applicant enlisted in the U.S. Army Reserve (USAR)
- on 8 January 1985, he was discharged from the USAR and enlisted in the Regular Army
- the applicant received counseling statements during the following months: October 1985, November 1985, December 1985, January 1986, August 1986, September 1986, October 1986, and November 1986
- on 27 January 1986, the applicant received an Article 15 for misconduct which resulted in his reduction in rank to private (PVT/E-2)
- on 1 July 1986, he was advanced to the rank of private first class (PFC/E-3)
- on 14 November 1986, the applicant's commander recommended his discharge under the provisions of AR 635-200 due to his pattern of misconduct and unsatisfactory job performance over an extended period
- on 19 November 1986, the applicant was psychiatrically cleared for administrative action deemed appropriate by the command
- on 16 December 1986, the commander approved the applicant's discharge under the provisions of Chapter 13, AR 635-200, General (Under Honorable Conditions)
- on 23 December 1986, the applicant received a general discharge for unsatisfactory performance, Separation Code: JHJ, Reenlistment Code: 3
- he submits witness statements from his stepmother and wife, his Review PTSD Disability Benefits Questionnaire, and a list of his medications

4. On 2 January 2025, the Case Management Division at Army Review Boards Agency requested a copy of the Redacted Criminal Investigation Division (CID) for MST and Military Police Reports pertaining to the applicant. On 7 January 2025, CID responded that a search of the Army criminal file indexes revealed no MST investigation pertaining to the applicant.

5. Due to the applicant's sexual assault and PTSD incurred while serving, the case will be reviewed and discussed by the Behavioral Health Staff at the Army Review Boards Agency.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to show his character of service as Honorable. 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 U.S. Army Reserve (USAR) on 18 September 1984. On 08 January 1985 he was discharged from the USAR and enlisted in the Regular Army, 2) the applicant received counseling statements during the following months: October 1985, November 1985, December 1985, January 1986, August 1986, September 1986, October 1986, and November 1986, 3) on 27 January 1986, the applicant received an Article 15 for misconduct (failure to obey a lawful order) which resulted in his reduction in rank to private (PVT/E-2), 4) on 14 November 1986, the applicant's commander recommended his discharge under the provisions of AR 635-200 due to his pattern of misconduct and unsatisfactory job performance over an extended period, 5) on 14 November 1986, the applicant's commander recommended his discharge under the provisions of AR 635-200 due to his pattern of misconduct and unsatisfactory job performance over an extended period, 6) on 19 November 1986, the applicant was psychiatrically cleared for administrative action deemed appropriate by the command, 7) the applicant was discharged on 23 December 1986 under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, with a separation Code of JHJ, and reenlistment Code of '3' 8) a memorandum from CID shows a search of the Army criminal file indexes revealed no Military Sexual Trauma (MST) 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. An in-service Report of Mental Status Evaluation (MSE) dated 19 November 1986 shows the applicant was referred for an evaluation as part of his discharge proceedings under the provisions of Chapter 13, AR 635-200. All domains of the MSE were within normal limits. The evaluating provider documented that the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible,

and did not meet criteria for a psychiatric condition. He was psychiatrically cleared for any administrative action deemed appropriate by command.

d. A review of JLV shows the applicant is 80% service-connected through the VA for several conditions, including 70% for PTSD. A VA Compensation and Pension (C&P) examination dated 07 March 2023 shows the applicant diagnosed with Anxiety Disorder, Unspecified and Depressive Disorder, Unspecified. A subsequent VA C&P Review exam for PTSD signed on 05 April 2024 shows the applicant was diagnosed with PTSD, Chronic, Major Depressive Disorder (MDD), Recurrent, Moderate, and Insomnia, Due to Other Mental Disorder. It was documented that he experienced sexual abuse in the military at age 19 years old and reported experiencing frequent nightmares, anhedonia, feelings of embarrassment, guilt, shame, insomnia, and panic attacks. The applicant's VA Form 21-0781a (Statement in Support of Claim for Service Connection for PTSD Secondary to Personal Assault) dated 20 January 2024 detailed the applicant's report of MST as well as another in-service trauma, documented as the death of one of his close friends, a fellow Soldier, who was ejected from a vehicle. The applicant described changes he experienced after the MST, including not wanting to be around others and isolating in his room thinking about what happened to him. He further stated that it became difficult for him to follow orders and stay focused, and that he had lost respect and trust in his superiors. A VA Form 21-019210 (Lay/witness Statement) dated 28 January 2024 authored by his stepmother documented the changes she noticed in the applicant after he returned home from the military. More specifically, she described the applicant as a once "outgoing and friendly" person to someone who was "distant, less outgoing, less agreeable, not as friendly, and somewhat subdued."

e. A list of current medications (undated and facility unknown) included as part of his application shows he was prescribed the following BH medications: Buspirone (anxiety), Melatonin (anxiety/insomnia), Trazodone (anxiety).

f. In his self-authored statement to the ABCMR, the applicant stated he was sexually assaulted by his First Sergeant, specifically reporting he was "sexually assaulted, traumatized, and harassed which rendered [him] unable to satisfactorily perform [his] assigned duties as [he] had previously done prior to the assault."

g. The recommendation for separation under the provisions of AR 635-200, Chapter 13 dated 17 November 1986 showed the specific reasons for the proposed action were: an established pattern of misconduct (disrespect, disobeying a lawful order, failure to repair), unsatisfactory job performance, and non-responsiveness to corrective counseling.

h. 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 and reported a history of MST. This Advisor would contend that the applicant's discharge

due to Unsatisfactory Performance is mitigated by his diagnosis of PTSD and history of MST.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reported a history of MST and is 70% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST and is 70% service-connected through the VA for PTSD. Service-connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's military medical record included as part of his application was void of any BH diagnosis or treatment history. Since being discharged from the military, he has been diagnosed and 70% service-connected through the VA for PTSD. He also reported a history of MST. As there is an association between difficulty with authority figures, decreased performance/motivation, and trauma, there is a nexus between the totality of his unsatisfactory performance (disrespect, disobeying a lawful order, failure to repair, unsatisfactory job performance, and non-responsiveness to corrective counseling) and his diagnosis of PTSD/history of MST. As such, BH mitigation is supported.

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 that the applicant engaged in multiple acts of misconduct, which led his commander to initiate separation under the governing regulation for unsatisfactory performance.

2. The Board found no error or injustice in the resulting characterization of service. The Board also reviewed the medical advisory opinion but did not concur with its conclusion that sufficient evidence exists to show the applicant had been diagnosed with PTSD or had reported a history of MST. The Board determined that the available evidence does

not support a finding that the applicant's discharge for unsatisfactory performance was mitigated by PTSD or MST.

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 discharge? Yes, the applicant reported a history of MST and is 70% service-connected through the VA for PTSD.

b. Did the condition exist or experience occur during military service? Yes, the applicant reported a history of MST and is 70% service-connected through the VA for PTSD. Service-connection establishes that the condition existed in-service.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's military medical record included as part of his application was void of any BH diagnosis or treatment history. Since being discharged from the military, he has been diagnosed and 70% service-connected through the VA for PTSD. He also reported a history of MST. As there is an association between difficulty with authority figures, decreased performance/motivation, and trauma, there is a nexus between the totality of his unsatisfactory performance (disrespect, disobeying a lawful order, failure to repair, unsatisfactory job performance, and non-responsiveness to corrective counseling) and his diagnosis of PTSD/history of MST. As such, BH mitigation is supported.

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:

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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
3. 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 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.

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 (DRBs) and Board 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 Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); 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 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 misconduct that 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 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.

6. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality

of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued the Soldier this character of service when their military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

7. AR 635-5 (Personnel Separations, Separation Documents), in effect at the time, included policies and procedures for DD Form 214 preparation. The regulation indicated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Program Number) and 28 (Narrative Reason for Separation). For item 27 (Reentry (RE) Code), the regulation referred preparers to AR 601-210 (Regular Army and Reserve Component Enlistment Program).

8. AR 635-5-1, in effect at the time, stated Soldiers separated under AR 635-200 and as a result of a general discharge were to receive an SPD of "JHJ" and have, "Unsatisfactory performance " entered in item 28 of their DD Form 214.

9. AR 601-210, Regular Army and Army Reserve Enlistment Program

a. Table 3-6 (Armed Forces RE codes, RA RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-2 – Persons separated before completing a contracted period of service whose reenlistment is not contemplated.
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

b. Paragraph 4-1 lists moral and administrative disqualifications for which waivers may be submitted. Table 4-1 contains waivable moral and administrative disqualifications. Line O is relevant to this scenario.

//NOTHING FOLLOWS//