

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2025

DOCKET NUMBER: AR20240013536

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record).

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 seeks correction and relief for the injustice he suffered from a sexual assault during Advanced Individual Training at Fort Benning, Georgia, in October 1975. The assault caused lasting mental health issues, including depression, anxiety, trust problems, and insomnia, for which he remains under the medical care of the Department of Veterans Affairs physicians. The incident stripped him of his manhood, destroyed his pride, hope, and sense of safety, and his delay in reporting was due to deep shame.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 1 October 1975.
 - b. He accepted nonjudicial punishment for the following:
 - 8 December 1975 –failure to obey a lawful order
 - 20 April 1976 –failure to be at his appointed place of duty; his punishment included reduction to private, E-1 (suspended 30 days)
 - 16 June 1976 – failure to be at his appointed place of duty

c. On 12 July 1976, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 5-37 due to lack of ability to adapt both socially and emotionally to the military. He recommended the applicant be furnished a General Discharge Certificate.

d. On 12 July 1976, the applicant acknowledged receipt of the notification and voluntarily consented to discharge. He further noted he desired to submit a statement on his own behalf; however, it is not available for review by the Board.

e. The immediate commander initiated separation action against the applicant for lack of ability to adapt both socially and emotionally to the military. The applicant had been repeatedly counseled about his lateness for duty and substandard military appearance and attitude.

f. On 15 July 1976, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 5-13, AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5-37 for failure to meet acceptable standard for continued military service. He would be issued a General Discharge Certificate.

g. On 26 July 1976, he was discharged from active duty with an under honorable conditions characterization of service. His DD Form 214 shows he completed 9 months and 26 days of active service with no lost time. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Sexual Assault/Harassment are related to his request. More specifically, he stated he was sexually assaulted while in

Advanced Individual Training (AIT) on 19 October 1975, which caused depression, anxiety, trust issues, insomnia, and resulted in him going to counseling. 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 01 October 1975, 2) he accepted nonjudicial punishment for the following: 8 December 1975 –failure to obey a lawful order; 20 April 1976 –failure to be at his appointed place of duty; and 16 June 1976 – failure to be at his appointed place of duty, 3) on 12 July 1976, the applicant’s commander notified him of his intent to separate him under the provisions of AR 635-200, chapter 5-37 due to lack of ability to adapt both socially and emotionally to the military. He was discharged accordingly on 26 July 1976 with an under honorable conditions characterization of service.

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. There were no military medical records available for review.

d. A review of JLV shows the applicant has an 80% service-connected disability rating through the VA for the following conditions: Limited Extension of the Knee (10%), PTSD (70%), Thigh condition (10%), Limited Extension of Thigh (0%), and Limited Motion of Ankle (10%). A VA Compensation and Pension (C&P) examination dated 19 November 2024 was available for review in JLV showing he was diagnosed with PTSD and Major Depressive Disorder, Recurrent, Severe. It was documented that during his previous C&P examination on 16 June 2021 he was diagnosed with PTSD secondary to childhood trauma and Military Sexual Trauma (MST). The provider documented he was undergoing outpatient BH treatment through the VA.

e. 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 and service-connected through the VA for PTSD that is at least in part secondary to MST, which is a potentially mitigating condition. This Advisor contends that the applicant’s misconduct is mitigated by his diagnosis of PTSD due to MST.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected through the VA with PTSD secondary to MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected through the VA with PTSD secondary to MST. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of records shows that the applicant has been diagnosed and 70% service-connected through the VA with PTSD that is at least in part secondary to MST. As there is an association between difficulty with authority figures, avoidance behavior, and trauma, there is a nexus between the applicant's misconduct of failure to obey a lawful order, failure to be at his appointed place of duty, and his diagnosis of PTSD secondary to 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 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 Board noted the applicant was separated for lack of ability to adapt both socially and emotionally to the military. He had been repeatedly counseled about his lateness for duty and substandard military appearance and attitude. However, the Board concurred with the medical advisory official who opined that there is sufficient evidence that the applicant has been diagnosed and service-connected through the VA for PTSD that is at least in part secondary to MST, which is a potentially mitigating condition. Therefore, the Board determined that the applicant's misconduct is mitigated by his diagnosis of PTSD due to MST and granted relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected through the VA with PTSD secondary to MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected through the VA with PTSD secondary to MST. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of records shows that the applicant has been diagnosed and 70% service-connected through the VA with PTSD that is at least in part secondary to MST. As there is an association between difficulty with authority figures, avoidance behavior, and trauma, there is a nexus between the applicant's misconduct of failure to obey a lawful order, failure to be at his appointed place of duty, and his diagnosis of PTSD secondary to MST. As such, BH mitigation is supported.

The Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XX	XX	XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 26 July 1976 to show an honorable characterization of service.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

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

b. A 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. Chapter 5-37 (Expeditious Discharge Program) states that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated.

4. 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.

5. 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.

6. 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.

7. 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//