

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240013537

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

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)

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 seeks this upgrade because, at the time of his separation, he did not present relevant information to the separation authority; this was because he feared for his life and felt it would be a mistake to say something
 - The applicant notes he made it through basic combat training and advanced individual training and was the Honor Graduate, top of his class
 - When he got to his permanent duty station, a senior officer in the battalion made sexual advances towards him; as the sexual advances continued and became more harassing in nature, he began to fear for his life; he started using drugs and eventually went absent without leave (AWOL)
 - Ultimately, the Army discharged him without addressing his mental health conditions; what he experienced as a result of military sexual trauma (MST) caused him to incur post-traumatic stress disorder (PTSD)
3. The applicant offered additional details in a self-authored statement:

- He turned himself in hoping the Army would provide the behavioral health therapy he needed; instead, the Army just discharged him
- Now, some 40 years later, he was in a county jail and started participating in a Veterans' program; with the help of his brothers-in-arms, he has come to see that what took place was not his fault
- "(The MST) affected my life so traumatically that I never felt I would amount to anything worthy of my country, community, my family, or myself, not having the mental awareness of a normal person...making me make wrong decisions (and manifest) destructive behaviors..."
- "I have now found a resource that may be to my advantage for me to continue living, feeling more of a success than a failure, with the compensation I deserve for being in the service and making an oath to my country"; the applicant additionally points out that he never used drugs until the MST

4. In a subsequent submission, the applicant asks the Board to refer to the "Hagel Memo, Kurta Memo, Carson Memo, (and) Rehabilitation Act 2...Don't Ask, Don't Tell Policy"; he continues:

- The Army failed to follow multiple regulations in processing his administrative separation, and this failure violated his due process rights; further, the applicant claims the Fifth Amendment
- "My claim is clear and certain...no other adequate remedy is available...no other or all other relief is exhausted..."
- Specifically, the Army failed to offer the possibility of rehabilitation and did not provide access to behavioral health treatment; the applicant cites the Administrative Procedures Act, case law, and various Army regulations; he additionally quotes portions of the attachment to the "Kurta Memo"
- The applicant gave details about the MST, stating the officer solicited him and tried to touch his private parts in an effort to arouse him; when he got rude with the officer for touching him, the officer threatened his life and career
- The applicant then describes how the MST affected him; he became depressed and he started to use marijuana; when it got to be too much, he left and stayed with his older sister; he told her everything; later, he also told his mother, and she convinced him to turn himself in
- After his discharge, he was unable to keep relationships and could not hold a job; "I never mentioned anything about the incidents to anyone in fear for my life and the 'don't ask, don't tell' policy"
- Now, with the help of the Veterans' program and a claims representative, he is petitioning for relief

5. A review of the applicant's service record shows the following:

- On 6 January 1982, the applicant enlisted into the Regular Army

- Effective 6 July 1982, the applicant's leadership promoted him to private (PV2)/E-2
- On 23 July 1982, the applicant accepted nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ), after he was AWOL, from 6 to 15 July 1982 (9 days)
- On 2 September 1982, the applicant accepted NJP for AWOL, from 27 to 28 August 1982 (1 day), and because he had fallen asleep while on charge of quarters duty; punishment included his reduction to private (PV1)/E-1 and 14-days' extra duty, which the commander suspended until December 1982
- On 7 September 1982, the applicant's unit reported him as AWOL; also, on 7 September 1982, the NJP imposing commander vacated the suspended 14-days of extra duty; on 24 September 1982, after a 17-day absence, the applicant returned to military control
- On 29 September 1982, the applicant departed his unit again in an AWOL status and, on 29 October 1982, his unit dropped him from unit rolls
- On 11 September 1984, the applicant surrendered himself to military authority and was reassigned to the Personnel Control Facility (PCF) at Fort Ord, CA
- On 19 September 1984, the PCF preferred court-martial charges against the applicant for having been AWOL, from 29 September 1982 to 11 September 1984 (713 days)
- On 19 September 1984, after consulting with counsel, the applicant requested separation under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - In his request, the applicant affirmed no one had coerced him to make this decision and he was making this request under his own free will
 - He acknowledged he was guilty of the charge preferred against him and elected not to submit statements in his own behalf
- On 19 September 1984, the PCF placed the applicant on excess leave, and he departed Fort Ord that same date
- On 1 November 1984, the separation authority approved the applicant's request and directed his under other than honorable conditions discharge; on 14 November 1984, orders separated the applicant accordingly
- The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 months of his 4-year enlistment contract, with three periods of lost time; the form additionally reflects the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon and two marksmanship qualification badges
 - Item 25 (Separation Authority) – Chapter 10, AR 635-200

- Item 26 (Separation Code) – "KFS"
- Item 27 (Reenlistment (RE) Code) – RE-3, RE-3B, RE-3C
- Item 28 (Narrative Reason for Separation) – "For the Good of the Service – In Lieu of Court-Martial"

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He asserts MST and PTSD as related to his request.

b. 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:

- Applicant enlisted into the Regular Army on 6 January 1982.
- On 23 July 1982, the applicant accepted nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ), after he was AWOL, from 6 to 15 July 1982 (9 days).
- On 2 September 1982, the applicant accepted NJP for AWOL, from 27 to 28 August 1982 (1 day), and because he had fallen asleep while on charge of quarters duty.
- On 29 September 1982, the applicant departed his unit in an AWOL status, and, on 29 October 1982, his unit dropped him from rolls.
- On 11 September 1984, the applicant surrendered to military authority and was reassigned to the Personnel Control Facility (PCF) at Fort Ord, CA.
- On 19 September 1984, the PCF preferred court-martial charges against the applicant for having been AWOL, from 29 September 1982 to 11 September 1984 (713 days).
- On 14 November 1984, the applicant was discharged from active duty under the provisions of AR 635-200, Chapter 10, with an under other than honorable conditions characterization of service. His DD Form 214 shows he was assigned separation code KFS and the narrative reason for separation was listed as "For the Good of the Service – In Lieu of Court-Martial," with reentry code 3, 3B, 3C.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he is seeking an upgrade because, at the time of his separation, he did not present relevant information to the separation authority since he feared for his life and felt it would be a mistake to say something. The applicant notes he made it through basic combat training and advanced individual training and was the Honor Graduate (unconfirmed), top of his class. When he got to his permanent duty station, a senior officer in the battalion made sexual advances towards him; as the sexual advances continued and became more harassing in nature, he began to fear for

his life; he started using drugs and eventually went absent without leave (AWOL). Ultimately, the Army discharged him without addressing his mental health conditions; what he experienced as a result of military sexual trauma (MST) caused him to incur post-traumatic stress disorder (PTSD). The applicant states, 40 years post-service while in county jail, he participated in a Veteran's program that allowed him to take advantage of available resources and receive compensation.

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation from his time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. However, JLV contains no treatment records, and the applicant did not provide any medical documentation.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence, based solely on the applicant's assertion, that he experienced MST and a subsequent diagnosis of PTSD that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to an extended period of being AWOL. He asserts the mitigating experience of MST and is service connected for PTSD. As there is an association between MST-related PTSD and avoidant behavior, there is a nexus between the applicant's experience of MST and his misconduct of being AWOL.

BOARD DISCUSSION:

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 reviewed and concurred with the medical advisor’s review finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigated his misconduct 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 asserts experiencing MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to an extended period of being AWOL. He asserts the mitigating experience of MST and is service connected for PTSD. As there is an association between MST-related PTSD and avoidant behavior, there is a nexus between the applicant’s experience of MST and his misconduct of being AWOL.

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

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 14 November 1984 to show in item 24 (Character of Service): General Discharge.

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.
 - (1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and

performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), paragraph 5-3 (Policy). Separation under this paragraph was the Secretary of the Army's prerogative. The separation of any Soldier of the Army under this authority was based on Secretary of the Army determination that separation was in the best interests of the Army.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

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

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have the narrative reason for separation: "For the Good of the Service – In Lieu of Court-Martial" entered on their DD Form 214.

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program.

a. Table 3-6 (Armed Forces RE Codes, Regular Army RE Codes) included the following list of the RE codes:

- RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the Regular Army; they were qualified for enlistment if all other criteria were met
- RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived
- RE-3B – Soldiers with lost time during their last period of service needed a waiver to reenter the Regular Army
- RE-3C – Soldiers who had completed over 4 months of service but did not meet the basic eligibility pay grade requirements required a waiver to reenter the Regular Army

b. Table 4-1 (Waivable Moral and Administrative Disqualifications). Line A (Disqualification) stated prior service applicants with lost time during their last period of service required a waiver to reenter the Regular Army.

7. 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.

8. 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.

9. 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.

10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//