

IN THE CASE OF: ██████████

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230005197

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his general, under honorable conditions discharge to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 21 February 2023
- Self-authored statement, undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220002960 on 9 November 2022.

2. The applicant provided a new statement with new issues that warrant Board consideration at this time.

3. The applicant states, in effect:

a. Another Soldier discharged in 2011, who became a behavior health professional and a social worker, was suspended from her counseling due to a personality disorder. The Army used this justification to discharge thousands of Soldiers.

b. This diagnosis was used to diagnose for discharge by weeding out injured or low performing Soldiers and to save money.

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

- a. On 28 December 1960, he enlisted in the Regular Army for 3 years at age 18.
- b. On 7 January 1961, he volunteered for Airborne Training.

c. On 11 January 1961, he voluntarily waived his enlistment commitment and his choice of assignment to attend training in Army Career Group-14 and assignment to Europe. He realized that upon completion of basic training he may be placed in an unassigned status for duty in Airborne units or at installations which did not conform to the commitment given to him at the time of his enlistment in the Army. On 28 April 1961 he was promoted to private 2/E-2.

d. On 17 May 1961, he volunteered to perform frequent aircraft flights and glider flights and to make parachute jumps from an aircraft while in flight.

e. On 13 July 1961, he requested termination of his Airborne status. The Commanding Officer, Company D, 1st Airborne Group, 502d Infantry, Fort Campbell, noted his conduct and efficiency were 'excellent' and 'good' respectively.

f. On the same date, the Commanding Officer, Company D, 1st Airborne Group, 502d Infantry, recommended approval of his request to terminate his Airborne status and forwarded his recommendation the Commanding General, 101st Airborne Division, Fort Campbell.

g. On 30 August 1961, the Mental Health Clinic referred him to and he underwent a psychiatric evaluation by the Chief Psychiatrist, Office of the Chief Neuropsychiatric Service, U.S. Army Hospital, Fort Campbell. The Certification of Report of Psychiatric Evaluation, noted:

(1) Diagnosis. The appropriate diagnosis was considered to be schizoid personality as seen by his unsociability, poor interpersonal relationships, and depressive features.

(2) Pertinent History. He was an 18 year old enlisted man with approximately 8 months of active duty and was referred to in-patient psychiatry from MHCS where he has been seen because of feelings of confusion and depression. The patient reported difficulties in relating to others and especially authority figures. The difficulty dated back prior to service and was seen in his poor school and social adjustment. If he were returned to duty, there would be a possibility of a more severe pathological development.

(3) Mental Status Examination. The examining psychiatrist noted he was of good intelligence, his attitude and behavior were characteristic of a moderately severe personality pattern disturbance.

(4) Findings. The Soldier was not psychotic or severely psychoneurotic and had no mental and/or physical disease or defect to warrant disposition under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or

Separation). He was mentally responsible, able to distinguish between right and wrong, and to adhere to the right. He did possess sufficient mental capacity to understand the nature of any proceedings against him and to intelligently conduct and/or cooperate in his own defense. There were not psychiatric contra-indications to whatever administrative action was deemed appropriate.

(5) Findings. This condition was not amenable to hospitalization, treatment, disciplinary action, training, transfer to another station or organization, or reclassification to another type of duty.

(6) Recommendation. It was recommended that the Soldier meet a Board of officers convened under the provisions of Army Regulation 635-209 (Discharge Unsuitability) to consider this expeditious separation from the service.

h. On 1 September 1961, he gave a report of medical history and on 5 September 1961, he underwent a medical examination for the purpose of discharge. He noted he was in good health, had frequent trouble sleeping, depression or excessive worry and indicated he had nervous trouble. He further noted that on 24 August 1961 he had depression. The examining physician noted he had schizoid personality and was qualified for discharge.

i. On 12 September 1961, the Commanding Officer, Replacement Detachment, 101st Airborne Division, certified the Soldier:

- had not received punishment under provisions of Article 15, UCMJ, 1951 while a member of Company D, 1st Airborne Group, 502d Infantry; or 101st Replacement Detachment, 101st Airborne Division
- had received not previous convictions by courts-martial during the current enlistment

j. On the same date, the Commanding Officer, Replacement Detachment, notified him he was recommending his elimination from the service under provisions of Army Regulation 635-209, he counseled him, and he notified him of his rights. He was afforded the right to request counsel but declined this opportunity; the right to have his case heard before a board of officers but waived this right; given the opportunity to submit a statement but declined to submit a statement.

k. On the same date, the Commanding Officer, Replacement Detachment, recommended his separation from the Military Service under the provisions of Army Regulation 635-209, paragraph 3b, prior to normal expiration of term of service. The reason for his recommendation: the enlisted man was considered to be schizoid personality as seen by his unsociability, poor interpersonal relationships, and depressive features. He had difficulties in relating to others and especially authority

figures. This difficulty dated back prior to service and was seen in his poor school and social adjustment. This condition was not amenable to hospitalization, treatment, disciplinary action, training, transfer to another station or organization, or reclassification to another type of duty. He noted the enlisted man was not under court-martial charges, and he was not serving a court-martial sentence in confinement. He further noted unknown conduct and unsatisfactory efficiency.

l. On 12 September 1961, the commanding officer, 101st Replacement Detachment, approved the recommendation for his separation and directed he be furnished a DD Form 257a (General Discharge Certificate).

m. On 20 September 1961, he was discharged. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under provisions of Army Regulation 635-209, paragraph 3b with a character of service of Under Honorable Conditions (General), and a separation program number 264. He completed 8 months and 23 days and held a military occupational specialty 111.00 (Light Weapons Infantryman).

5. In ABCMR Docket Number AR20220002960, 9 November 2022, the Board considered the evidence of record and the medical advisory provided by the ARBA psychologist in determining there was insufficient evidence of in-service mitigating factors to overcome his unsuitability separation.

6. A Department of the Army memorandum, dated 14 January 1977, subject: Review of Unsuitability Discharge by Reason of Personality Disorder, signed by Donald G. Brotzman, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed retroactive application of the 18 January 1977 changes to AR 635-200 concerning applications for upgrades of discharges issued by reason of personality disorders.

7. A Department of the Army memorandum, dated 8 February 1978, subject: Litigation Involving the Army's System for Discharging Individual with Personality Disorders, signed by Robert L. Nelson, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed that that all applicant's for relief for a less than honorable discharge as a result of personality disorder who were not diagnosed by a medical doctor trained in psychiatry, shall be entitled to have their discharges upgraded to honorable. Further, in reviewing such applications for relief, the presence of a personality disorder diagnosis should be considered as a mitigating factor that justifies relief except in cases where there are clear and demonstrable why a fully honorable discharged should not be given. However, conviction by general court-martial or by more than one special court-martial was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

8. A Department of the Army memorandum, 15 January 1980, subject: Discharges for Unsuitability Due to Personality Disorders, signed by [REDACTED], Chief, Examining Branch, directed that eligible applicants may qualify for upgrading of their administrative discharge if:

a. They were not diagnosed by a medical doctor properly trained in psychiatry; or

b. They were issued a general discharge on the basis of their personality disorder diagnosis, rather than their service record; or

c. The Board considers the presence of a personality disorder diagnosis as a mitigating factor that justifies relief, and there are no clear and demonstrable reasons why a fully honorable discharge shall not be given.

9. 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the applicant’s case falls under guidance provided to this Board in 1980 regarding the presence of a personality disorder diagnosis being a mitigating factor that justifies relief. The Board found nothing in the record that would have warranted a character of service less than honorable and determined an upgrade is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20220002960 on 9 November 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

2/15/2024

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 15-185 (Army Board for Correction of Military Records) 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.

a. 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 (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 13-5b(2) provided an individual was subject to separation under the provision of this chapter for unsuitability for character and behavior disorders. A General Discharge Certificate was normally directed under this paragraph.

3. Army Regulation (AR) 635-209 (Discharge Unsuitability), in effect from 17 March 1955 to 14 July 1966, prescribed policies and procedures for the separation of Soldiers who were considered unsuitable for continue military service.

a. A Soldier was separated under this provision when it was clearly established the Soldier was unlikely to develop sufficiently to participate in further military training/become a satisfactory Soldier, or had a psychiatric or physical condition that did not warrant a discharge for physical disability.

b. Separation due to character and behavior disorders pertained to Soldiers with character and behavior disorders, disorders of intelligence, and transient personality disorders due to acute or special stress as defined in Special Regulation 40-1025-2 (Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions – 1949).

c. A Soldier who was discharged for unsuitability was to be given either an honorable or a general characterization of service, as warranted by the Soldier's records. Such discharge was to be effected when it had been determined an individual was unsuitable for further military service because of inaptitude. This applied to individuals who were best described as inapt, due to lack of general adaptability, want of readiness or skill, un-handiness, or inability to learn.

4. Special Regulation 40-1025-2 (Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions), 1949, defined character and behavior disorders as those indicative of developmental defects or pathological trends in the personality structure, with minimal subjective anxiety, and little or no sense of distress. It stated further that, in most instances, the disorder was manifested by a lifelong pattern of action or behavior ("acting out") rather than by mental or emotional symptoms. The associated categories were:

- pathological personality types – maladjustment of individuals as evidenced by lifelong abnormal behavior patterns
- immaturity reactions – physically adult individuals who are unable to maintain their emotional equilibrium and independence when under minor or major stress
- alcoholism – character disturbance due to alcohol abuse

- addiction – includes cases where the use of drugs represent much deeper character disturbances where individuals engage in antisocial behavior, stealing, or sexual assault while under the influence of drugs
- primary childhood behavior reactions – serious emotional difficulties within the child that are not due to organic defects where emotional displays are carried to an extreme degree

5. Army Regulation (AR) 635-212 (Personnel Separations, Discharge, Unfitness and Unsuitability), in effect from 15 July 1966 to 23 November 1972, set forth the policy and procedures for the administrative separation of enlisted personnel for unfitness and unsuitability. It provided for the discharge due to unsuitability of those individuals with character and behavior disorders and disorders of intelligence as determined by proper medical authority. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

6. Army Regulation 635-200 (Personnel Separations, Enlisted Personnel), change 39, dated 23 November 1972, effective 15 January 1973, superseded AR 635-212 with AR 635-200, Chapter 13 (Separation for Unfitness and Unsuitability). Interim Change to AR 635-200, dated 18 January 1977, effective 22 February 1977, which made changes to chapters 1 and 13, stated that an enlisted Soldier's type of discharge and the character of service were to be determined solely by the individual's military record during the current enlistment. Further, any separation for unsuitability based on a personality disorder must include a diagnosis of a personality disorder made by a physician trained in psychiatry and psychiatric diagnosis, and consistent with the description in the Diagnostic and Statistical Manual of Mental Disorders which describes the condition as deeply ingrained, maladaptive pattern of behavior of long duration which interferes with the members' ability to perform duty.

7. A Department of the Army memorandum, dated 14 January 1977, subject: Review of Unsuitability Discharge by Reason of Personality Disorder, signed by Donald G. Brotzman, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed retroactive application of the 18 January 1977 changes to AR 635-200 concerning applications for upgrades of discharges issued by reason of personality disorders.

8. A Department of the Army memorandum, dated 8 February 1978, subject: Litigation Involving the Army's System for Discharging Individual with Personality Disorders, signed by Robert L. Nelson, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed that that all applicant's for relief for a less than honorable discharge as a result of personality disorder who were not diagnosed by a medical doctor trained in psychiatry, shall be entitled to have their discharges upgraded to honorable. Further, in reviewing such applications for relief, the presence of a personality disorder diagnosis should be considered as a mitigating factor that justifies relief except in cases where

there are clear and demonstrable why a fully honorable discharged should not be given. However, conviction by general court-martial or by more than one special court-martial was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

9. A Department of the Army memorandum, 15 January 1980, subject: Discharges for Unsuitability Due to Personality Disorders, signed by E. E. Wilmeth, Chief, Examining Branch, directed that eligible applicants may qualify for upgrading of their administrative discharge if:

- a. They were not diagnosed by a medical doctor properly trained in psychiatry; or
- b. They were issued a general discharge on the basis of their personality disorder diagnosis, rather than their service record; or
- c. The Board considers the presence of a personality disorder diagnosis as a mitigating factor that justifies relief, and there are no clear and demonstrable reasons why a fully honorable discharge shall not be given.

10. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, in paragraph 3-7 defines the character of service for administrative discharges.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

(1) Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to AD or ADT or where required under specific reasons for separation unless an entry-level status separation (uncharacterized) is warranted. (See para 3-9a and chap 11.)

(2) When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply:

(a) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(b) A Soldier will not necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the UCMJ Art 15.

Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge.

(c) An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

(d) Unless otherwise ineligible, a Soldier may receive an honorable discharge if he/she has, during his/her current enlistment, period of obligated service, or any extensions thereof, received a personal decoration.

b. General discharge:

(1) 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.

(2) A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

11. Army Regulation 635-5 (Personnel Separations – Separation Forms), in effect at the time, prescribed the specific authorities (statutory or other directives), the reasons for separating Soldiers from active duty, and the SPNs to be entered on the DD Form 214. SPN code 264 applied to Soldiers being discharged for unsuitability due to character and behavior disorders under the provisions first of AR 635-209, then for Army Regulation 635-212, and then in Army Regulation 635-200.

12. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established policies and prescribed procedures for the physical disability evaluation of members of the Army for retention, retirement, or separation.

13. 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.

14. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

15. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to 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.

//NOTHING FOLLOWS//