

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230005755

ON BEHALF OF THE APPLICANT, COUNSEL REQUESTS:

- an upgrade of his under honorable conditions discharge (General)
- amendment of the narrative reason to reflect “Secretarial Authority” or “Miscellaneous/General Reasons”

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief with Exhibit A-1 through Exhibit C

Exhibit A-1 through A-9: Enlisted Evaluations

Exhibit A-10: Statement of Personal History

Exhibit A-11 through Exhibit A-12: (Enlistment/Reenlistment Contracts)

Exhibit A-13: Soldier Statement

Exhibit A-14: Personal Statement in support of Request for Discharge for the
Good of the Service

Exhibit A-15: Applicant's letter to Separation Approving Authority

Exhibit A-16: Indebtedness counseling

Exhibit A-17: Notification of Formal Relief of Duty

Exhibit A-18: Pay Adjustment Authorization

Exhibit A-19: Rights Warning Procedure/Waiver Certificate

Exhibit A-20: DD Form 214 (Certificate of Release or Discharge from Active
Duty)

Exhibit A-21: Veterans Affairs (VA) Request for Information

Exhibit A-22: Case Separation File

Exhibit A-23: Induction Record

Exhibit A-24: NGB Form 22 (Report of Separation and Record of Service)

Exhibit A-25: Enlisted Evaluation Report (April 1986 – March 1987)

Exhibit B: Medical Report

Exhibit C: Medical Treatment 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, through counsel, states:

a. From 4 September 1963, and intermittently until his administrative separation on 26 March 1986, the applicant served his country in the United States Army and National Guard Reserves [REDACTED]. The applicant was administratively separated in March 1986 after 19 years of service for "[his] inability to manage [his] finances, [his] lack of judgment in borrowing money from subordinates, and [his] failure to repay just debts."

b. The applicant deserves an upgrade in his discharge characterization because (i) the relevant misconduct was not violent and was limited-intime, (ii) the applicant displayed a clean prior-service and post-service record, and (iii) the applicant suffers from underlying mental health conditions, including the diagnosis of post-traumatic stress disorder (PTSD), which may mitigate the misconduct for which he was discharged.

c. Under the Kurta Memo, the Veteran's PTSD, which existed during the time of the alleged misconduct, should excuse, or mitigate his alleged misconduct. Further, under the Wilkie Memo and based on grounds of justice and equity and the totality of his life and circumstances, the Veteran should be granted an upgrade in his discharge status. In light of the liberal consideration standard mandated by the Secretary of Defense for applications like the Veteran's, we respectfully request that the ABCMR upgrade the Veteran's discharge to "Honorable" and amend the narrative explanation for his discharge of "For the good of the service - In lieu of court-martial" to "Secretarial Authority" or "Miscellaneous/General Reasons." With such relief, the Veteran will finally obtain the full honor he and his family deserve, especially in light of the hardships he continues to face from his time in service.

3. The applicant, through counsel, provides:

a. Exhibit A-1 through A-9: Enlisted Evaluations, dated between 7 May 1981 and 15 April 1987.

b. Exhibit A-10: Statement of Personal History contains his record of assignments beginning with his enlistment and basic combat training until his last assignment with the Headquarters and Headquarters Battery Division Artillery (DIVARTY), 29th Field Artillery Fort Carson, Colorado.

c. Exhibits A-11 and A-12 contain the following enlistment/reenlistment contracts:

(1) On 2 December 1970, he enlisted for a period of three (3) years in the Regular Army (RA). Item 29 (Prior Service) reflects he honorably served as a specialist⁴ (SP4)/E-4 from 4 September 1963 thru 2 September 1965 in the Army of the United States (AUS) and again from 25 November 1970 through 1 December 1970 as a private (PVT) in the AUS.

(2) On 5 September 1973, he reenlisted for a period of five (5) years in the RA. Item 29 (Prior Service) reflects he was honorably discharged on 4 September 1973 in the grade of specialist⁵ (SP5)/E-5 and his date and term of last enlistment was 2 December 1970 for three (3) years.

d. Exhibit A-13: Soldier statement, written by [REDACTED] contain the sequence of events when the applicant approached her for a loan of \$400.00, the agreed upon payment date, and when the loan was actually paid in full.

e. Exhibit A-14: Personal Statement in support of Request for Discharge for the Good of the Service, which contains the applicant's personal data, to include his marital status, the ages of his children. Item 11 asks the applicant why he wants a discharge; however, this area was blank.

f. Exhibit A-15: Applicant's letter to Separation Approving Authority, dated 24 September 1987, provides a detailed timeline of his military career dating back to his first enlistment on 23 September 1963. In this letter, the applicant states, "for the last two years I have been experiencing financial difficulties and extreme family problems." He acknowledged his responsibility as a senior noncommissioned officer and the fact that, during the investigation in January/February 1987, he continued to do his job in a highly professional manner and will continue to do so "until the last moment of my services in the Army." He requested that the separation authority consider recommending an honorable discharge in order for him, the applicant, to keep his benefits that he deserved and earned for the last 19 years.

g. Exhibit A-16: Indebtedness counseling, dated 20 July 1987, which acknowledges his indebtedness to Citicorp Retail Services, Inc and the payment arrangement made.

h. Exhibit A-17: Notification of Formal Relief of Duty, dated 27 March 1986, reflects he was informed by his Battalion Commander that he was officially relieved from duty as the First Sergeant based on his inability to manage his finances, his lack of judgement in borrowing money from subordinates, and his failure to repay just debts.

i. Exhibit A-18: Pay Adjustment Authorization, dated 21 January 1987, reflects he cashed four personal checks at the Finance and Accounting Office, all of which were

returned as uncollectable. The applicant was required to pay the total amount of the checks, in addition to a \$60.00 service charge, payable to the Finance & Accounting Officer, Fort Carson, Colorado.

j. Exhibit A-19: Rights Warning Procedure/Waiver Certificate, dated 19 February 1987, reflects the applicant indicated “I do not want to be questioned or say anything” regarding the offense of larceny in which he was being accused of uttering worthless checks without sufficient funds.”

k. Exhibit A-20: DD Form 214 reflects he was discharged on 22 October 1987 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service – in lieu of court-martial, character of service of general under honorable conditions, separation code KFS, and reenlistment code RE-4. He served 9 years, 4 months, and 17 days of net active service this period; 9 years, 7 months, and 24 days of total prior active service; and 3 years and 1 day of total prior inactive service. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) reflects the following:

Army Service Ribbon	Army Good Conduct Medal w/5th
National Defense Service Medal	Award
Vietnam Campaign Medal w/60	NCO Professional Development
device	Ribbon -3
Vietnam Cross of Gallantry w/Palm	Army Commendation Medal w/1 Oak
Vietnam Service Medal w/3 Bronze	Leaf Cluster
Service Stars	Expert Badge (Rifle M-16 & .45 Cal
Meritorious Service Medal	Pistol)
	Overseas Service Ribbon – 4

l. Exhibit A-21: Veterans Affairs (VA) Request for Information, dated 1 December 2011, reflects a request for medical/dental record.

m. Exhibit A-22: Case Separation File (detailed in paragraph 4 below)

n. Exhibit A-23: Induction Record reflects the applicant was inducted into the Army National Guard on 4 September 1963 and was honorably discharged on 2 September 1965.

o. Exhibit A-24: NGB Form 22 reflects the applicant was honorably discharged from the Army National Guard of Puerto Rico and as a Reserve of the Army on 16 October 1968 as a sergeant (SGT)/E-5, squad leader. Item 25 (Prior Service) reflects the following:

- Army of the United States, 4 September 1963 to 2 September 1965, MOS 11C1O
- Army U.S. Army Reserve, 3 September 1965 to 16 October 1965, MOS 11C1O

p. Exhibit A-25: Enlisted Evaluation Report (April 1986 – March 1987) reflects the applicant's principal duty title was Division Master Fitness Trainer. He received the highest score, from both his rater and indorser, on both his professional competence and professional standards.

q. Exhibit B: Medical Report, dated 25 June 2013 (4 pages).

r. Exhibit C: Medical Treatment Record, dated 15 October 2021, authored by [REDACTED], LMFT, Character Way Counseling, Coaching & Consulting, reflects the applicant's Nexus of PTSD Psychological Opinion. Based on the interviews conducted on 14 August 2021, 27 August 2021, and 3 September 2021, it is of the author's clinical opinion that the applicant's current and long existing symptoms are consistent with a 70 percent PTSD disability designation.

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

a. He enlisted in the Regular Army on 2 December 1970.

b. The applicant's complete military records are not available to the Board for review. Therefore, this case is being considered based on the documents provided by the applicant.

c. Endorsements from the applicant's company commander, battalion commander, and brigade commander reflect their recommendation for approval of the request for Discharge for the Good of the Service, with an issuance of an Under Other Than Honorable Conditions Discharge certificate.

d. Headquarters, Fort Carson and Headquarters, 4th Infantry Division (Mechanized) memorandum, dated 9 October 1987, Subject: Separation Under Provision (UP) Chapter 10, AR 635-200, reflects the separation packet had been approved, the applicant was to report to the Transition Center for separation processing on 15 October 1987. It further states, paragraph 10-1, AR 635-200 will be cited as the authority, and will be issued a General Discharge certificate.

e. He was discharged on 22 October 1987 under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial, his characterization of service reflects under honorable conditions (General), separation code KFS, and reenlistment code RE-4. He served 9 years, 4 months, and 17 days of active service.

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

6. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) states a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

7. The Board should consider the applicant's submissions in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable and a change to the narrative reason for discharge. He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 2 December 1970.
- The applicant's complete military records are not available, but a memorandum dated 9 October 1987 and his DD214 indicate the applicant was separated under Chapter 10, AR 635-200, for the good of the service – in lieu of court-martial. A review of the evidence provided indicated that the applicant accused of uttering worthless checks without sufficient funds and borrowing money from a subordinate.
- The applicant was discharged on 22 October 1987, and his DD214 indicates he served 9 years, 4 months, and 17 days of net active service this period; 9 years, 7 months, and 24 days of total prior active service; and 3 years and 1 day of total prior inactive service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD was factor in his misconduct and separation. A self-authored letter dated 24 September 1987 stated that the applicant served 13 months in Korea, and there was a handwritten notation of "one tour in Vietnam." This document also explains that over the previous two years he had been experiencing financial and family problems and that he has served for 19 years. There was an excerpt from what appears to be mental health documentation dated 25 June 2013, which stated that the applicant

experiences sleep difficulty and nightmares related to combat experiences. He was referred for medication. A Mental Disorders Disability Benefits Questionnaire (DBQ) dated 13 August 2020 was included and showed that the applicant was diagnosed with Mild Neurocognitive Disorder. It also stated that the applicant denied PTSD symptoms, including nightmares related to combat, but he continued to feel regret and guilt associated with his discharge from the military. Because of his memory difficulties, the examiner included his daughter in the evaluation, and she reported symptoms of PTSD including avoidance of reminders or talking about his experience in Vietnam and being extremely guarded. Another mental health note dated 25 June 2013 was included and discussed the applicant's difficulty with sleep. A letter dated 15 October 2021 from a licensed marriage and family therapist (LMFT) was also included. This letter indicates the provider met with the applicant on three occasions, and she noted some symptoms of PTSD and attributed this to his time in Vietnam. Finally, there is a statement by a physician indicating it was his medical opinion that the applicant's "diagnosis of stress was caused by his military service." There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant has a total of 90% service-connected disability, which includes several physical health problems, and he is 70% service connected for Major Depressive Disorder. The applicant initiated mental health treatment through the VA on 25 June 2013 and was started on a medication to help with sleep and nightmares, which was his primary complaint. A neuropsychological report dated 14 May 2015 showed decline in his cognitive abilities since the previous exam two to three years prior and diagnosed him with Mild Neurocognitive Disorder. He denied feeling depressed but endorsed increased irritability. He was reevaluated in August 2016, which showed some continued cognitive decline, and it was noted that he no longer takes the medication prescribed for sleep and nightmares. In January 2024, documentation showed that the applicant's wife attempted to engage in marital counseling, but when the applicant was contacted, he declined the services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. Documentation included in the application showed a diagnosis of PTSD by a non-VA provider, and the applicant is service connected for Major Depressive Disorder by the VA. The applicant has also been diagnosed with Mild Neurocognitive Disorder, which is typically associated with aging; therefore, it is unlikely that this

condition existed during his time in the military. There were no mental health records from his time in service indicating a mental health related diagnosis or condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the applicant has been diagnosed with Major Depressive Disorder and is service-connected for this condition.

g. Nonetheless, there is no nexus between his mental health condition, including PTSD, and his misconduct related to uttering worthless checks without sufficient funds and borrowing money from a subordinate: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 applicant was charged with an offense or offenses, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding evidence of a behavioral health condition, but no nexus between that condition and the misconduct committed. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. The evidence of record shows the applicant was discharged for the good of the service in lieu of trial by court-martial under the provisions of chapter 10 of Army Regulation 635-200. Therefore, the Board found no error in the narrative reason for separation is depicted on the applicant's separation document and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

10/28/2024

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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. 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. 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. 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. 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//