

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009860

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service and a hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Marriage License and Marriage Certificate, dated [REDACTED]  
[REDACTED]

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's spouse states he has been suffering with his mental health since his time in the Army. The applicant gave his all during his service and witnessed things that changed him forever. His error in judgement caused his general discharge, it is very extreme for his mistake. He is still paying for the damages he has endured during his over five years of service. The applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues as conditions related to his request.
3. The applicant enlisted in the Regular Army on 23 September 1987. He reenlisted on 24 August 1990. He served in Southwest Asia from 31 December 1990 thru 14 June 1991. He again reenlisted on 15 March 1993, for 2 years.
4. Two DA Forms 4856 (General Counseling Form), dated 11 May 1993 and 15 June 1993, show the applicant was counseled on two occasions pertaining to him possibly being recommended for separation.
5. On 19 May 1993 and 1 June 1993, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge

due to his misconduct. His mental status evaluation noted, he met retention requirements, was mentally responsible, able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings. He was cleared for any administrative action deemed appropriate by his command.

6. On 1 June 1993, he accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice, for on or about 25 April 1993, operating a vehicle while drunk. His punishment included reduction to specialist/E-4 and extra duty for 30 days (suspended, to automatically be remitted if not vacated before 1 September 1993).

7. On an undisclosed date, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), for commission of a serious offense. As reason for the proposed action, the commander noted the applicant's driving while drunk.

8. On 7 July 1993, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He elected not to submit statements in his own behalf.

9. The applicant's immediate commander formally recommended the applicant's separation from the service, under the provisions of Army Regulation 635-200, paragraph 14-12c, and recommended the issuance of a general discharge.

10. On 20 July 1993, the separation authority approved the recommended discharge and directed the issuance of a general discharge.

11. The applicant was discharged accordingly on 28 July 1993, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, with a under honorable conditions (general) characterization of service in the grade of E-4. He received a separation code of "JKQ" and reentry code "3." His DD Form 214 contains the following entries:

a. He completed 5 years, 10 months, and 6 days of net active service with 4 years, 5 months, and 16 days of foreign service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) the entries:

- Army Achievement Medal

- Army Commendation Medal
- Army Service Ribbon
- Army Good Conduct Medal (2nd Award)
- Kuwait Liberation Medal
- Noncommissioned Officer Professional Development Ribbon
- National Defense Service Medal
- Overseas Service Ribbon
- Southwest Asia Service Medal with 3 bronze service stars
- Driver Badge with Wheel and Track Bars
- Expert Marksmanship Qualification Badge with Grenade Bar
- Mechanic Badge
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

c. Block 18 (Remarks) the entries:

- continuous honorable active service from 23 September 1987 thru 14 March 1993
- immediate reenlistment this period from 23 September 1987 thru 23 August 1990 and 24 August 1990 thru 14 March 1993

12. The applicant spouse provides a Marriage License and Marriage Certificate, confirming her relation to the applicant.

13. There is no indication the applicant petitioned to the Army Discharge Review Board for an upgrade of his discharge within that Board's 15-year Statute of limitations.

14. On 21 September 2023, the Case Management Division, Army Review Boards Agency (ARBA), sent an e-mail to the applicant requesting additional documentation related to the applicant's contention of PTSD and TBI. No additional documentation has been received from the applicant.

15. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

16. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

## 17. MEDICAL REVIEW:

a. Background: The former service member's (FSM) spouse is requesting, on behalf of her husband, an upgrade of his under honorable conditions (general) discharge. The spouse contends PTSD, TBI, and OMH mitigates the former service member's (FSM) discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the Regular Army on 23 September 1987. He reenlisted on 24 August 1990. He served in Southwest Asia from 31 December 1990 thru 14 June 1991. He again reenlisted on 15 March 1993.
- Two DA Forms 4856 (General Counseling Form), dated 11 May 1993 and 15 June 1993, show the applicant was counseled on two occasions pertaining to him possibly being recommended for separation.
- On 1 June 1993, he accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice, for on or about 25 April 1993, operating a vehicle while drunk. His punishment included reduction to specialist/E-4 and extra duty for 30 days (suspended, to automatically be remitted if not vacated before 1 September 1993).
- On an undisclosed date, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), for commission of a serious offense. As reason for the proposed action, the commander noted the applicant's driving while drunk.
- Applicant was discharged accordingly on 28 July 1993, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, with a under honorable conditions (general) characterization of service in the grade of E-4. He received a separation code of "JKQ" and reentry code "3."

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant's spouse states he has been suffering with his mental health since his time in the Army. The applicant gave his all during his service and witnessed things

that changed him forever. His error in judgement caused his general discharge, it is very extreme for his mistake. He is still paying for the damages he has endured during his over five years of service. The applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues as conditions related to this request.

e. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation submitted by the applicant shows the FSM underwent a mental status evaluation on 19 May 1993. The evaluation indicates the FSM had no significant mental illness or diagnosis, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings. He was cleared for any administrative action deemed appropriate by his command.

f. The VA electronic medical records available for review indicates the FSM is not service connected and has only been diagnosed with Alcohol Dependence. The VA electronic medical record evidences four inpatient medical hospitalizations, due to alcohol related medical conditions. No medical documentation post-military service substantiating the assertion of PTSD, TBI, and OMH were provided. On 21 September 2023, the Case Management Division, Army Review Boards Agency (ARBA), sent an e-mail requesting additional documentation in support of the applicant's contention of PTSD, OMH, and TBI. No medical documentation was received from the applicant.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition on behalf of the FSM.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with a BH condition while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD, TBI, or OMH. And while the applicant asserted PTSD, TBI, and OMH on behalf of the FSM, no medical documentation substantiating any BH diagnosis was provided.

However, per Liberal Consideration guidelines, the applicant’s assertion of the FSM’s PTSD, TBI, and OMH merits consideration by the Board.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant’s petition, available military records and medical review, the Board considered the advising official finding insufficient evidence of any mitigating BH condition. As noted by the opine, there is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition.

2. The Board determined under liberal consideration there is sufficient evidence that warrants an upgrade to honorable. The Board found the applicant was not afforded the opportunity to overcome his UCMJ. Evidence in the record shows less than 30 days after receiving the article 15 the applicant was chaptered out of the military. The Board determined the punishment was harsh based on the applicant’s previous honorable service, decorations and awards, length of service and deployments. The Board agreed relief is warranted and granted relief upgrading the applicant’s characterization of service to honorable.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 28 July 1993, showing his characterization of service as honorable.

4/19/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending June 1996, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks): SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 15-185 (ABCMR) states 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.

4. Army Regulation 635-200, sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

b. 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.

c. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; 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 to those conditions or experiences.

6. 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.

//NOTHING FOLLOWS//