

IN THE CASE OF: ██████████

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230010094

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under other than honorable conditions discharge
- personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 AC86-08127 on 23 March 1988.

2. The applicant states he is an autistic schizophrenic. His behavior was as a result of his mental conditions.

3. The applicant enlisted in the Regular Army on 8 August 1978. He was awarded military occupational specialty 91G (Behavioral Science Specialist) upon completion of the required training.

4. The applicant's records contain numerous counseling forms with dates ranging from April 1979 to May 1980 showing he was counseled on several occasions for acts of misconduct that include:

- destruction of government property
- unethical professional performance
- failure to obey orders
- disrespect
- unacceptable performance
- failure to repair

5. The applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, on:

- 11 March 1980 for being disrespectful in language toward his superior noncommissioned officer
- 20 May 1980 for failing to go to his appointed place of duty, disobeying a lawful order, and leaving his place of duty without authority
- 27 June 1980 for being absent without leave during the period 12-24 June 1980, breaking restriction, and possession of marijuana

6. On 16 May 1980, the applicant underwent a mental status evaluation. His behavior was found normal, he was mentally responsible, and he was able to distinguish right from wrong and able adhere to the right. No significant mental illness was noted.

7. On 25 June 1980, the applicant was informed by his commander that he was being considered for separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b, for misconduct, frequent incidents of a discreditable nature with civil or military authorities.

8. On 7 December 1988, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated action to separate him for misconduct and of the rights available to him. He elected not to submit statements in his own behalf.

9. On or around 16 July 1980, the separation authority approved the separation action.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 31 July 1980 under the provisions of Army Regulation 635-200, chapter 14, for misconduct - frequent incidents of a discreditable nature with civil or military authorities, with an under other than honorable conditions character of service.

11. The Army Discharge Review Board denied the applicant's request for an upgrade of his discharge on 14 August 1986.

12. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge. He contends other mental health (OMH) condition mitigates his 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 8 August 1978.
- Applicant's records contain numerous counseling forms with dates ranging from April 1979 to May 1980 showing he was counseled on several occasions for acts of misconduct that include:
  - destruction of government property
  - unethical professional performance
  - failure to obey orders
  - disrespect
  - unacceptable performance
  - failure to repair
- A letter of reprimand dated 12 June 1979, for unethical behavior as a Behavioral Science Specialist, indicates that while working at a mental health facility he had a personal relationship with a patient undergoing treatment for severe emotional problems. An informal counseling session note, dated 25 September 1979, further indicates he was removed from that facility for ongoing unprofessional behavior.
- Applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, on:
  - 11 March 1980 for being disrespectful in language toward his superior noncommissioned officer
  - 20 May 1980 for failing to go to his appointed place of duty, disobeying a lawful order, and leaving his place of duty without authority
  - 27 June 1980 for being absent without leave during the period 12-24 June 1980, breaking restriction, and possession of marijuana
  - On 25 June 1980, the applicant was informed by his commander that he was being considered for separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b, for misconduct, frequent incidents of a discreditable nature with civil or military authorities.
- Applicant was discharged on 31 July 1980, under the provisions of AR 635-200, Chapter 14, for misconduct - frequent incidents of a discreditable nature with civil or military authorities. His DD Form 214 confirms a UOTHC characterization of service, with separation code JKA and reenlistment code RE-3.
- The Army Discharge Review Board denied the applicant's request for an upgrade of his discharge on 14 August 1986.

c. Review of Available Records Including Medical:

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), ABCMR Docket Number AC86-00688, 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 states he is an autistic schizophrenic. His behavior was as a result of his mental condition.

e. Due to the period of service, no active-duty electronic medical records were available for review. In addition, the applicant submitted no hardcopy medical documentation from his time of service evidencing a behavioral health condition, treatment, or diagnosis. On 16 May 1980, the applicant underwent a mental status evaluation. No significant mental illness was noted. He was found mentally responsible, able to distinguish right from wrong and adhere to the right, and was psychiatrically cleared for any administrative action deemed appropriate by command.

f. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of OMH. However, in a statement in support of his prior request to the Board the applicant indicated: "It is because I felt I received all that I really needed from the Army, that I myself decided to get out, and was confident and strong enough to leave no room for doubt about my deep-rooted intentions. The Army would not satisfy my intellectual, emotional fervor or prowess, and I desired to put all my pursuits and talents into no matter what the cost civilian life without restrictions." The Board denied his petition since it was based on his contention that the Army would not satisfy his intellectual and emotional fervor. On 29 September 2023, the applicant was notified by the Army Review Boards Agency that he was required to provide medical documentation to support his contention of other mental health condition. To date, no medical documentation has been received.

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. However, per Liberal Consideration guidelines, the applicant's self-assertion of OMH merits consideration by the Board.

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.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant has been diagnosed with any BH condition.

(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 are no VA electronic medical records indicating he has been treated for any BH condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis or condition. However, per Liberal Consideration guidelines, the applicant's self-assertion of OMH merits consideration by the Board.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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 DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant committed a series of misconduct consisting of 3 NJPs. He was frequently counseled but did not seem to respond to counseling. Accordingly, his chain of command initiated separation action against him. He was discharged for misconduct, frequent incidents of a discreditable nature with civil or military authorities, with an under other than honorable conditions characterization of service. The burden of proof rests with the applicant. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination that based on the information available, there is insufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AC86-08127 on 23 March 1988.

9/9/2024

**X** Donna Bush

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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.

REFERENCES:

1. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is 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 such is merited by the Soldier's overall record.

b. Paragraph 3-7a states 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. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

2. 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 Service Discharge Review Boards and Service Boards for Correction of Military Records when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part 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.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 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. Section 1556 of Title 10, U.S. Code, 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. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//