

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230011116

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable. Additionally, he requests an appearance before the Board in person or via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Department of Veterans Affairs (DVA) Form
- Medical Document

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He was first on scene at [REDACTED] accidental death by M-16 in Hanau Germany during a 567th Engineer Company inspection in April 1977. His head was blown away, but he was still alive, and the applicant held his hands until he was pulled away. He was numb as the ambulance left. This incident started his emotional shut down. This event initiated his complex post-traumatic stress disorder (PTSD) which he's currently diagnosed with and receiving treatment for along with his worsening back/leg pain. Because he buried this event and all the death events following, he began self-medicating and retreating from that reality and the self-destructive behaviors took over.

b. He is working on forgiving himself to move forward and hopes that clearing the wreckage of his past will allow him to do so. He was very proud of his service in the cold war and was ready to give whatever it took to accomplish the mission. Because he was unaware of the cause of his self-destructive behavior, he believes he could have had the distinguished career he yearned for. He was able to seek treatment 24 years ago

and has had a productive and fulfilling career as a Geriatric Registered Nurse. He would be eternally grateful if this could help him correct that period of his life and allow him to live out his remaining days in peace.

3. The applicant enlisted in the Regular Army on 23 June 1977 for a period of 4 years. His military occupational specialty (MOS) was 12E (Atomic Demolition Munitions Specialist).

4. The applicant served in Germany from 8 October 1977 through 4 February 1979 and 24 July 1981 through 23 July 1984.

5. He reenlisted in the Regular Army on 23 December 1980.

6. A Synopsis of Alcohol and Drug Abuse Prevention Control Program (ADAPCP) Rehabilitation Activities, dated 7 March 1983 shows the applicant was enrolled in the ADAPCP on 19 October 1981 for hashish. He completed Track 1 and on 8 September 1982 he was referred because of a positive urinalysis for tetrahydrocannabinol (THC). He was then enrolled in Track II after an alcohol related incident which occurred in the field. It was explained to the applicant that since he was in Track II the goals required for a successful completion would be total abstinence from all drugs and alcohol along with weekly attendance at alcoholics anonymous.

a. On 2 February he was tested for THC with positive results. The potential for successful rehabilitation was poor and separation from service was recommended.

b. On 20 October 1983 he was involved in another drug related incident of possession.

7. The applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 10 November 1983 for wrongfully possessing some amount of hashish on or about 20 October 1983. His punishment consisted of reduction to the grade of private first class/E-3, forfeiture of \$100.00 for one month, and extra duty.

8. The applicant's immediate commander notified him on 9 November 1983 that he was initiating action to discharge him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separation-Enlisted Personnel), Chapter 9, for drug abuse rehabilitation failure. The applicant acknowledged receipt on the same date.

9. The applicant consulted with counsel on the same date and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He acknowledged his understanding and elected to submit a statement in his own behalf however the statement is not available for review.

10. The applicant's commander formally recommended the applicant's separation from service on 11 November 1983 under the provisions of AR 635-200, Chapter 9, by reason of alcohol and drug abuse prevention and control program failure. The chain of command concurred.

11. The separation authority approved the recommended discharge on 11 November 1983 and directed the issuance of a under honorable conditions (general) discharge. The applicant would not be transferred to the Individual Ready Reserve (IRR).

12. The applicant was discharged on 7 December 1983. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 9, by reason of drug abuse rehabilitation failure. His service was characterized as under honorable conditions (general). He completed 6 years, 5 months, and 15 days of net active service. His awards include the Army Service Ribbon, Overseas Service Ribbon, Army Good Conduct Medal, and the Noncommissioned Officer Professional Development Ribbon.

13. The applicant provides:

a. A DVA form that shows mental health information as PTSD and other mental health.

b. A medical document dated 18 January 2023 shows an assessment of PTSD.

14. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from General Under Honorable Conditions to Honorable. He stated that PTSD was related to his request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Regular Army 23Jun1977. His primary MOS 12E10 Atomic Demolition Munitions Specialist. He was stationed in Germany 19771008 to 19791204 and 19810724 to 19840723. He did not experience combat deployment. He was discharged 07Dec1983 under provision of AR 635-200,

chapter 9 for drug rehab failure. His service was characterized as General Under Honorable Conditions.

a. The applicant was initially enrolled in ADAPCP (Alcohol Drug and Abuse Control Program) on 19Oct1981 for hashish. He completed Track I of the program. On 08Sep1982 he was re-referred due to an alcohol related incident. He was re-enrolled on 15Oct1982 due to positive urine for THC and alcohol abuse. This time, he was placed in Track II: Total abstinence from alcohol and drugs was required and weekly AA meetings. Early December 1982, alcohol use was suspected. He had a positive test for THC on 02Feb1983, and a possession offence on 20Oct1983. Based on this history, he was deemed a treatment failure.

b. Review of records did not show a mental health diagnosis while in service although he did endorse BH symptoms during separation medical evaluation. During the 24Oct1983 Report of Medical History, he endorsed frequent trouble sleeping but denied depression or excessive worry, loss of memory or amnesia, nervous trouble of any sort and suicide attempt. He also endorsed a head injury 8 years prior with loss of consciousness. *The head injury appears to predate his military service.* He denied sequela including loss of memory or amnesia, dizziness, or fainting spells. Of note, he did endorse frequent or severe headaches. He denied problems with drugs prior to service, only experimentation which he stated he did not like.

c. In his ABCMR application, the applicant described witnessing a fellow soldier bleeding from a self-inflicted (accidental vs purposeful) head wound shortly after the impact of a discharged round from a M-16. This occurred in April or May 1978. He cited this as the beginning of his mental health condition. He also noted as contributing, stress due to some aspects of his MOS (Atomic Demolition Munitions Specialist) associated with nuclear weapons and death/dying issues related to a long career in geriatric nursing (post military). The 25Aug2023 Mental Health Initial Evaluation Note VAMC showed diagnoses PTSD with in-service stressor "I watched a soldier [who] had part of his head blown off and his mouth was moving, and he was shaking....". The VA has service connected him for Mood Disorder.

3. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered. The applicant has been diagnosed with PTSD which under Liberal Consideration, is mitigating for the drug offences and rehab failure which led to the applicant's discharge from service with his service characterized as General Under Honorable Conditions.

4. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant has been diagnosed with PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant has been diagnosed with PTSD with the principle in-service stressor being having witnessed the traumatic death of a fellow soldier.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Substance abuse (marijuana and alcohol), and self-treatment with such is a common sequela of PTSD.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Medical Advisor.
3. The Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. 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.

3/29/2025

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 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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.
  - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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 or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

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. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

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 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//