

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230011880

APPLICANT REQUESTS: in effect, upgrade of his under other than honorable conditions discharge and his under honorable conditions (general) discharge based on disability, and recoupment of lost pay and entitlements.

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Veterans Affairs (VA) forms and documents

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 states relief is warranted due to the fact that his DD Form 214 (Report of Separation from Active Duty) states "Physical disability – Existed Prior to Service (EPTS) – medical board," but he was never given a rehabilitative session. At the time of his discharge he was under extreme stress. He started going absent without leave (AWOL) due to his experiences with racism, the death of his father, and his drug problems. He mentally couldn't take it.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request.
4. On 15 November 1972, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 36K (Field Wireman).
5. On 21 January 1973, the applicant was reported as AWOL and remained absent until he returned to military authorities on 22 January 1973.

6. On 24 January 1973, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$50.00 for a period of one month, and seven days restriction and extra duty.
7. On 24 January 1973, the applicant again accepted NJP under Article 15 of the UCMJ, for absenting himself from his appointed place of duty on or about 23 January 1973. His punishment included forfeiture of \$75.00 for a period of one month.
8. On 15 May 1973, the applicant was reported as AWOL a second time and remained absent until he returned to military authorities on 5 June 1973.
9. On 8 June 1973, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$79.00 for one month, and 14 days extra duty.
10. On 13 July 1973, the applicant was reported as AWOL a third time and remained absent until he returned to military authorities on 6 August 1973.
11. On 10 August 1973, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$170.00 per month for two months, and 45 days restriction and extra duty.
12. Before a special court-martial on 30 November 1973, at Fort Eustis, VA, the applicant was found guilty of one specification of unlawfully assaulting a Soldier by striking him in the jaw with his fist, on or about 17 September 1973.
13. The court sentenced him to confinement at hard labor for two months, forfeiture of \$50.00 per month for three months, and reduction to the grade of E-1. The sentence was approved on 20 December 1973 and forwarded for appellate review.
14. On 30 January 1974, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go to his appointed place of duty on or about 21 January 1974, on or about 22 January 1974, and on or about 24 January 1974. His punishment included forfeiture of \$50.00 for a period of one month, and 14 days restriction and extra duty.
15. Special Court-Martial Order 3, issued by Headquarters, U.S. Army Transportation Center and Fort Eustis, Fort Eustis, VA on 28 March 1974, notes the findings of guilty and the sentence in the applicant's special court-martial case were set aside and all charges were dismissed. All of his rights, privileges, and property were restored.
16. On 4 February 1974, the applicant was reported as AWOL a fourth time and remained absent until he returned to military authorities on 26 February 1974.

17. On 1 April 1974, the applicant was reported as AWOL a fifth time and remained absent until he returned to military authorities on 5 May 1974.
18. Before a special court-martial on 28 May 1974, at Fort George Meade, MD, the applicant was found guilty of two specifications of going AWOL.
19. The court sentenced him to confinement at hard labor for two months, forfeiture of \$100.00 per month for two months, and reduction to the grade of E-1. The sentence was approved on 12 June 1974, and the record of trial was forwarded for appellate review.
20. On 3 September 1974, the applicant was reported as AWOL a sixth time and remained absent until he returned to military authorities on 1 October 1974.
21. On 2 October 1974, the applicant was reported as AWOL a seventh time and remained absent until he returned to military authorities on 17 October 1974.
22. Before a special court-martial on 20 November 1974, at Fort Bragg, NC, the applicant was found guilty of two specifications of going AWOL.
23. The court sentenced him to confinement at hard labor for three months, forfeiture of \$200.00 per month for three months, and a bad conduct discharge (BCD). The sentence was approved on 11 December 1974, and the record of trial was forwarded for appellate review.
24. Special Court-Martial Order Number 50, issued by Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, NC, on 15 July 1975, noted that the applicant's sentence had been affirmed and ordered the BCD duly executed.
25. The applicant was discharged on 26 August 1975. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, as a result of court-martial. His service was characterized as under other than honorable conditions. He was credited with 2 years, 3 months, and 15 days of net active service this period with 177 days of time lost.
26. On 29 September 1975, the applicant reenlisted in the Regular Army for 3 years.
27. On 5 October 1975, the applicant, a basic trainee, was admitted to the hospital for observation after allegedly ingesting a hand full of aspirin tablets and three Valium tablets.

28. A DA Form 3947 (Medical Board Proceedings) dated 10 October 1975, notes the applicant was a 21-year-old male who was deemed medically unfit and diagnosed with chronic paranoid schizophrenia, manifested by a blunted affect, paranoia, thought disorder, lack of insight, and delusions. EPTS, the condition occurred within 120 days of entry into active duty. He was found mentally competent for pay purposes and had the capacity to understand the nature of and to cooperate in Medical Evaluation Board (MEB) Proceedings.

29. The MEB recommended the applicant be discharged from service, in accordance with Army Regulation 635-40 (Personnel Separations – Physical Evaluation for Retention, Retirement, or Separation), Chapter 5 (Expeditious Discharge), for not meeting retention standards as outlined under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3, paragraph 3-29.

30. A DA Form 3349 (Medical Condition – Physical Profile Record) dated 16 October 1975, notes the applicant was diagnosed with disorder of thinking and behavior. He was placed on temporary profile with limitations; no assignment to isolated areas where definitive psychiatric care is not available and no handling of weapons of any kind.

31. On 29 October 1975, the applicant acknowledged the MEB findings and further acknowledged that he understood he was entitled to the same consideration and processing as any other member of the Army who is separated for physical disability, which included consideration of his case by the adjudicative system established by the Secretary of the Army. However, he elected not to exercise that right to a full and fair hearing. He understood he would be expeditiously separated from the Army and that his entitlement to VA benefits will be determined by the VA. Additionally, he understood that he would be separated by reason of physical disability – EPTS and will receive a discharge commensurate with the character of his service.

32. The hospital's Patient Administration Division's assistant recommended his separation from the Army under the provisions of Army Regulation 635-40, Chapter 5. The separation authority approved the recommendation on 31 October 1975.

33. The applicant was discharged on 5 December 1975. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), Chapter 5, for physical disability – EPTS, medical board. His service was characterized as under honorable conditions (general). He was credited with 1 month and 21 days of net active service this period with 16 days of time lost.

34. The applicant provides various VA forms and documents in support of his application for disability compensation and related benefits. The applicant lists mental disorders and Chronic Obstructive Pulmonary Disease as current disabilities related to

in-service exposure. These documents are provided in their entirety for the Board's review within the supporting documents.

35. MEDICAL REVIEW: 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 an upgrade from Under Honorable Conditions (General). He also requests disability. He stated that PTSD and Other Mental Health conditions are related to his requests.

a. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the Regular Army 15Nov1972. His MOS was 36K Field Wireman. He did not have foreign service. He was discharged from the first period of service on 26Aug1975 under provisions of AR 635-200 chapter 11 due to court-martial. His service was characterized as Under Other Than Honorable Conditions. He reenlisted one month later on 29Sep1975 and was separated under 635-40 chapter 5 by reason of physical disability that existed prior to service (EPTS) on 05Dec1975. His service was characterized as Under Honorable Conditions, General.

b. The ABCMR ROP gives a detailed account of the offences and dates. Of note, the first period of service contained seven instances of AWOL offences. He underwent three special court-martial proceedings. During the first, he was found guilty of one specification of unlawfully assaulting a Soldier in the jaw with his fist. During the last two special court-martial proceedings, he was found guilty of 2 instances each of being AWOL.

c. The record indicated 177 days were lost due to AWOL behavior during his first enlistment. That notwithstanding, the applicant reenlisted in the Regular Army 29Sep1975 (with a different last name). He stated in his ABCMR application concerning his reenlistment that he was not mentally stable enough to reenlist. He reported the following stressors related to or experienced during his military service and contributed to his going AWOL: Racism, the loss of his father, and drug use. He stated that he fought the other Soldier because he called him the "n" word. Within a week of reenlistment, the applicant was admitted to the hospital for overdose ingestion.

d. According to the MEB NARSUM, the applicant was admitted 05Oct1975. He had arrived at the Basic Training Unit on 03Oct1975 and was seen the following day in the emergency room for a nosebleed. He was ultimately admitted for overdose ingestion of Valium and Aspirin (that were prescribed during the emergency room visit). While hospitalized, symptoms included anxiety, agitation, paranoia, report of auditory and visual hallucinations, and being withdrawn. He was diagnosed with Chronic Paranoid Schizophrenia, manifested by a blunted affect, paranoia, thought disorder, lack of

insight and delusion. Psychiatric re-examination when he was not in an agitated state revealed the underlying psychotic condition which MEB preparer opined existed prior to entry into active military duty. The applicant's psychosis did respond to antipsychotic medication. Of note, the applicant reported a head injury in 10th grade that required hospitalization for three days. Also of note, the applicant denied alcohol and drug use at the time. Drug testing was not mentioned in the hospital documentation presently available for review. He was assessed to be mentally able to participate in Medical Board Proceedings. He did not meet medical retention standards of AR 40-501 chapter 3; therefore, he was referred for a MEB. The MEB Proceedings reflected the Chronic Paranoid Schizophrenia diagnosis. The condition was determined EPTS and to have not been aggravated by his military service. The condition required a permanent P-4 physical profile for Disorder of Thinking and Behavior dated 16Oct1975 which required no assignment to areas where definitive psychiatric care is not available and no handling weapons of any kind. He was recommended to be separated under provisions of AR 635-40, chapter 5.

e. There were no service treatment records available for review. There were no VA facility encounters available for review in JLV. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance, were considered. Under Liberal Consideration, the applicant's self-assertion of PTSD is sufficient for consideration for a discharge upgrade. The applicant's PTSD is mitigating for the AWOL offences which led to his court-martial(s) and characterization of first period of service as Under Other Than Honorable Conditions. The applicant's second period of service was characterized as Under Honorable Conditions, General. No misconduct was documented for the second period of service.

f. The Chronic Paranoid Schizophrenia condition failed medical retention standards of AR 40-501 chapter 3. The 17Oct1975 Report of Medical Examination (SF 88) did not reveal any other diagnosis or defect. The Chronic Paranoid Schizophrenia condition was determined to have existed prior to service. The evidence that indicates this condition existed prior to military service is it presented so close to his entry into the second period of service, and it was likely in the prodromal phase during the first period of service. Evidence was insufficient to support that the PTSD condition failed medical retention standards of AR 40-501 chapter 3.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Schizophrenia and self-asserts PTSD both may excuse or mitigate his discharge.

(2) Did the condition exist, or did the experience occur during military service?
Yes. The applicant was diagnosed with schizophrenia in service and he self-asserts PTSD with reported in-service stressors.

(3) Does the condition or experience actually excuse or mitigate the discharge?
Yes. As there is an association between psychosis and avoidance (due to paranoia), there is a nexus between his diagnosis of Chronic Paranoid Schizophrenia and his multiple incidents of AWOL. Additionally, paranoid psychosis can also lead one to believe that other people are trying to harm them, resulting in them reacting violently in an attempt to protect themselves. While the applicant shared that the reason for his assault of the other soldier was that the latter called him an ethnic slur, it is more likely than not, the applicant's symptoms of paranoia and disordered thinking due to his psychotic disorder directly influenced his behavior contributing to the intensity of his reaction to the insult.

BOARD DISCUSSION:

1. 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 mental health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.
2. A majority of the Board found insufficient evidence of in-service mitigating factors and, while concurring with the conclusion of the medical advising official regarding his misconduct being mitigated by his mental health, found the frequency and persistence of his misconduct to be a limiting factor in granting any relief. A majority of the Board also noted that his final discharge was under honorable conditions (general) and the evidence does not support a fully honorable character of service. Based on a preponderance of the evidence, the Board determined the character of service the applicant received both times he was separated were not in error or unjust.
3. The member in the minority concurred with the conclusion of the medical advising official that the applicant's psychotic disorder mitigates his misconduct. The member in the minority determined the applicant's initial discharge should be corrected to show his character of service as under honorable conditions (general) and his second discharge should be corrected to show his character of service as honorable.

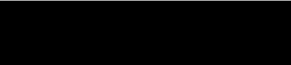
BOARD VOTE:

<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 for correction of the records of the individual concerned.

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, 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. 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.

3. Army Regulation 635-40 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided the policies, responsibilities and procedures for the retention, retirement or separation of a member who is determined to be unfit to perform the duties of his office, grade, rank or rating because of physical disability. Chapter 5 provided for the expeditious discharge of enlisted personnel who, in accordance with Chapter 3, Army Regulation 40-501, were not qualified for retention on active duty by reason of physical disability which was neither incurred nor aggravated during any period in which the member was entitled to basic pay.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "KFN" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for physical disability – EPTS, medical board.

5. 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. 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.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, Traumatic Brain Injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

8. 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, 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//