

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012749

APPLICANT REQUESTS:

a. Upgrade of his under other than honorable conditions discharge to a general discharge under honorable conditions based on having incurred post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues while on active duty.

b. Permission to appear personally before the Board, via video/telephone.

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

- Three DD Forms 149 (Application for Correction of Military Record)
- Letter from applicant's medical provider
- Two authorization forms for the release of Protected Health Information (PHI)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Online Health Report
- Clinical Notes and Documents
- CT Scan Results
- MRI Scan Results

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, in effect, he is asking the Board to upgrade his character of service because his mental health has been deteriorating due to his TBI; additionally, he has been dealing with PTSD, severe anxiety, and depression.

a. The applicant filed a claim with the Department of Veterans Affairs (VA) and all of his corroborating medical evidence was submitted with that claim. While he was in the

"psych ward," they performed 12 ECTs (electroconvulsive or electroshock therapy; a psychiatric treatment to manage mental disorders that have not responded to other treatments). The applicant declares that his mental health issues, TBI, and PTSD all contributed to his adverse separation; all he wanted was to serve honorably for 20 years like his father.

b. In support of his request, the applicant provides medical evidence:

(1) Clinical Notes, completed by the applicant's physician in or around December 2023, wherein the doctor reports the applicant complained of headaches for the past 2 years after he fell and landed on his back; the applicant also hit his head on a rock about 1 year ago. An associated MRI (magnetic resonance imaging) report indicated the applicant's brain showed "post-traumatic changes."

(2) Letter, dated in December 2023, from the applicant's behavioral health provider (Ms. [REDACTED] Advanced Practice Registered Nurse (APRN), Certified Nurse Practitioner (CNP), and Psychiatric-Mental Health Nurse Practitioner-Board Certified (PMHNP-BC)). His provider states the applicant "has a history significant for TBI x2 in 2001 and again recently in Oct. 2023. As a result of these TBIs, [applicant] has acted impulsively, struggles to see consequences to impulsive actions, and has difficulty concentrating."

3. A review of the applicant's service record reveals the following:

a. On 7 February 1980, after obtaining his parents' permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old. On 5 June 1980, while attending advanced individual training (AIT) for military occupational specialty (MOS) 05B (Radio Teletype Operator), the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). The imposing commander found the applicant guilty of willfully disobeying the order of a noncommissioned officer (NCO) who had told the applicant to go to his room and remain there after being involved in a fight.

b. Upon completion of initial entry training, orders assigned the applicant to Hawaii, and he arrived at his new unit on 13 July 1980. Effective 24 October 1980, his leadership promoted him to private (PV2)/E-2.

c. On 14 January 1981, the applicant accepted NJP from his battalion commander for being drunk and disorderly on 5 September 1980; attempting to assault a military police corporal, also on 5 September 1980; and possessing marijuana on 6 August 1980. The commander's punishment included reduction to private (PV1)/E-1. In or around March 1981, the applicant again accepted NJP from his battalion commander because, on 13 February 1981, the applicant had used disrespectful language towards

a sergeant first class; resisted apprehension by an armed forces policeman, on 13 February 1981; and absented himself without authority from his unit, from 25 to 26 February 1981. The applicant's punishments consisted of 30-days' correctional custody and the forfeiture of \$250 per month for 2 months.

d. On 17 August 1981, the applicant's commander initiated a bar to reenlistment action against the applicant, citing the applicant's prior NJP actions; the commander noted, "Service member has indicated (a) complete inability or unwillingness to adapt to discipline within the chain of command." The command subsequently approved the bar.

e. On 8 September 1981, a special court-martial convicted the applicant of UCMJ violations.

(1) The applicant's command charged him with violating the below-listed UCMJ Articles. Regarding Charge II (Article 121, Larceny), the applicant pleaded guilty to wrongful appropriation, vice larceny; for all other charges, he pleaded not guilty:

- Charge I, Article 90 (Willful Disobedience of a Commissioned Officer's Order); two specifications
- Charge II, Article 121 (Larceny); one specification
- Charge III, Article 134 (General Article – Disorderly Conduct); one specification

(2) The court found the applicant guilty of all charges and sentenced him to 4-months' confinement and the forfeiture of \$334 per month for 3 months. The court immediately remanded the applicant to confinement.

(3) On 10 September 1981, the special court-martial convening authority approved the sentence and ordered its execution.

f. Orders subsequently transferred the applicant to the U.S. Army Retraining Brigade (USARB) at Fort Riley, KS, and he arrived at USARB, on 29 September 1981. On 21 October 1981, a USARB special court-martial order suspended the unexecuted portion of the applicant's confinement sentence.

g. On 31 October 1981, the applicant received treatment at Fort Riley's military hospital after he cut himself on the chest and abdomen with a piece of glass. On 3 November 1981, the Division Psychiatrist completed a DA Form 3822-R (Report of Mental Status Evaluation), wherein he reported that the applicant met the medical retention standards, outlined in Army Regulation (AR) 40-501 (Standards of Medical Fitness). The report additionally stated the following:

(1) Diagnosis: "Passive-Aggressive Personality Disorder, chronic, severe, manifested by conflicts with authority, manipulative behaviors, and antisocial traits."

(2) History: "SM (service member) is a 19-year-old single...male with chronic problems adjusting to military life. He was admitted to psychiatry following a manipulative gesture of cutting his abdomen with glass. He feels no motivation to remain in the Army and states he came in only to avoid prosecution."

(3) Recommendations: "This SM has no mental illness which would warrant disposition through medical channels. His condition has been chronic, and it is extremely unlikely that he would respond to further rehabilitative efforts. It is strongly recommended that he be considered for administrative discharge IAW (in accordance with) chapter 13 (Separation for Unsuitability) or 14 (Separation for Misconduct), AR 635-200 (Personnel Separations – Enlisted Personnel), if deemed appropriate by his command."

h. On 5 November 1981, and contrary to the applicant's pleas, a summary court-martial found the applicant guilty of two specifications in violation of Article 91 (Assaulting an NCO). The court sentenced the applicant to 21-days' confinement and the forfeiture of \$200 per month for one month. On 9 November 1981, the summary court-martial convening authority approved the sentence and ordered its execution.

i. On 19 November 1981, USARB initiated an investigation under Article 72 (Vacation of Suspension), UCMJ; the investigation was to determine whether the applicant's recent UCMJ infractions violated the conditions of his suspended confinement sentence.

(1) An investigating officer (IO) conducted hearings on 30 November and 2 December 1981; the applicant was present and represented by counsel. After considering the applicant's testimony and that of another witness, the IO recommended the vacation of the suspension of the applicant's sentence.

(2) On 4 December 1981, the special court-martial convening authority vacated the suspension of the applicant's confinement.

j. On 4 December 1981, the applicant's USARB commander advised him in writing that he was initiating separation action against the applicant for misconduct, citing the provisions of AR 635-200. Also, on 4 December 1981, the commander prepared his recommendation for the separation authority, with which he provided a document titled "Resume," that chronologically listed the applicant's infractions and the applicant's prior and current commands' disciplinary actions.

k. On 7 January 1982, after consulting with counsel, the applicant affirmed that counsel (a Judge Advocate General officer) had advised him of the basis for his pending separation, the effects of the separation, and the rights the applicant had, per AR 635-200. The applicant elected to waive his rights and opted not to submit statements in his own behalf.

l. On or about 19 January 1982, the separation authority approved the commander's separation recommendation and directed the applicant's under other than honorable conditions discharge; on 29 January 1982, orders separated the applicant accordingly. His DD Form 214 shows he completed 1 year, 7 months, and 28 days of his 3-year enlistment contract, with four periods of lost time totaling 115 days. The report additionally reflected the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – two marksmanship qualification badges.

(2) Special Additional Information:

- Item 25 (Separation Authority) – paragraph 14-33b (1) (Other Misconduct – Patterns of Misconduct), AR 635-200
- Item 26 (Separation Code (SPD)) – "JKA"
- Item 27 (Reentry (RE) Code) – RE-3B
- Item 28 (Narrative Reason for Separation) – "Frequent Involvement in Incidents of a Discreditable Nature with Civil or Military Authorities"

m. On 11 February 1982, an IO appointed to conduct a line-of-duty investigation into the applicant's self-inflicted injuries filed his report. The report found that the applicant's injuries were not in the line of duty, due to his own misconduct, and, on 23 March 1982, the 1st Infantry Division Adjutant General approved those findings on behalf of the Secretary of the Army.

n. On 21 July 1996, the applicant petitioned the Army Discharge Review Board, requesting an upgraded character of service.

(1) The applicant stated he joined the Army at a young age and he drank excessively; nonetheless, he was an excellent Soldier when he was sober and his leaders never questioned his competence. The applicant expressed regret that he was unable to complete 20 years of military service, as his father had done. The applicant went on to disclose that his life turned around when he started going to church; he married, he and his wife had a small child, and, at the time of his application, he was a licensed seaman.

(2) On 20 August 1997, the Army Review Boards Agency (ARBA) informed the applicant that his application was received more than 15 years after his separation date; as such, the applicant needed to apply to the ABCMR.

o. In May 2006, the applicant submitted two DD Forms 149 to the ABCMR; the first requested an upgraded character of service and the second asked the Board to correct his social security number (SSN). On 19 July 2006, ARBA advised the applicant it would forward his request for upgrade to the Board, but it was administratively closing the applicant's SSN request because he needed to provide more evidence. ABCMR records do not show whether the Board acted on the applicant's upgrade request.

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (IPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant, now deceased (5 April 2024), had applied to the ABCMR requesting an upgrade of his 29 January 1982 discharge characterized as under other than honorable conditions and, in essence, a referral to the Disability Evaluation System (DES). On his DD 149, the applicant has indicated that PTSD, TBI (traumatic brain injury), and other mental health conditions are related to his requests.

"Having my discharge upgraded to general under honorable conditions due to TBI, mental health deterioration. I have filed a VA claim as of FEB/MAR of this year thru the Grand Rapids MN vets office. Due to mental health issues memory very bad, also due to having 12 ECTs [electroconvulsive therapy]done in psych wards in St. Paul and MI all the collaborating medical information was sent in with my claim

application. This mental health and TBI and PTSD were the cause of my early discharge. I had wanted to serve with honor for 20 years as my dad did.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. The applicant’s DD 214 shows that he entered the Regular Army on 7 February 1980 and was discharged 29 January 1982 under authority provided in paragraph 14-33b(1) of AR 635-200, Personnel Separations – Enlisted Personnel (1 May 1980): Frequent incidents of discreditable nature with civil or military authorities.

d. No contemporaneous medical documentation was submitted with the application. Because the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. Form a 12 June 2023 “To whom it may concern” provider’s memorandum:

“[Applicant] has been under my care since May of 2022. He has a history significant for traumatic brain injuries x2 in 2001 and again recently in Oct. 2023. As a result of these TBI’s, James has acted impulsively, struggles to see consequences to impulsive actions, and has difficulty concentrating. In addition to the TBI’s, James has went through 12 rounds of ECT. James reports following the ECT treatments, his short-term and long-term memory have been very poor.”

f. A civilian December 2023 clinical encounter shows the applicant has alcohol and substance abuse disorders and his mental health diagnoses include generalized anxiety disorder, bipolar disorder, and depressive disorder.

g. Part II of his Personal Qualification Record shows one 1-day period of absence without leave and three periods of imprisonment: 43 days, 15 days, and 56 days.

h. A Record of Court Martial shows the applicant was convicted of two specifications of disobeying a lawful order, one specification of disorderly conduct, one specification of theft, and two specifications of assault.

i. Supporting documentation also contains several Article 15’s for a variety of offences.

j. The applicant underwent a mental status evaluation on 1 November 1981. The psychiatrist noted the applicant was passive aggressive and that the remainder of his examination was normal. He opined the applicant had the mental capacity to understand and participated in the proceedings, was mentally responsible, and met the retention requirement of chapter 3 of AR 40-501, Standards of Medical Fitness. He went on to state:

“1. DIAGNOSIS: Passive-Aggressive Personality Disorder, chronic, severe, manifested by conflicts with authority, manipulative behaviors, and antisocial traits.

HISTORY: SM [service member] is a 19-year-old single, Caucasian male with chronic problems adjusting to military life. He was admitted to psychiatry following a manipulative gesture of cutting his abdomen with glass. He feels no motivation to remain in the Army and states he came in only to avoid prosecution.

3. RECOMMENDATIONS : This SM has no mental illness which would warrant disposition through medical channels. His condition has been chronic and it is extremely unlikely that he would respond to further rehabilitative efforts. It is strongly recommended that he be considered for administrative discharge IAW Chapter 13 or 14 AR 635-200, if deemed appropriate by his command.”

k. JLV shows he had no diagnoses on his medical problem list and received non-service-connected care on a humanitarian care emergency basis.

l. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations.

m. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

n. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has PTSD, TBI, and other mental health conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts these mental health conditions and his TBI were present while he was in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD, other mental health conditions, or a TBI. Review of the VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition.

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 mental health and TBI claims 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. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD, other mental health conditions, or TBI. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

12/19/2024

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 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 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-13b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

b. Section II (Secretarial Authority), Paragraph 5-3 (Authority). The separation of enlisted personnel was the prerogative of the Secretary of the Army. The discharge of any enlisted member of the Army for the convenience of the government was to be at the Secretary's discretion, with the issuance of an honorable or a general discharge certificate, as determined by the Secretary.

c. Paragraph 14-33 (Other Misconduct). Commanders identified Soldiers for discharge when they displayed a pattern of misconduct; this included Soldiers who were involved in frequent incidents of a discreditable nature with civil or military authorities. An under other than honorable conditions character of service was normally given for Soldiers discharged under this provision.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the

appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-280 (Army Reenlistment Program).

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-33b (1), AR 635-200 were to receive an SPD of "JKA" and have, "Misconduct – Frequent Incidents of a Discreditable Nature with Civil or Military Authorities" entered in item 28 of their DD Form 214.

6. AR 601-280, in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Paragraph 2-22b (Waivable Disqualification/AWOL/Time Lost) stated the Commanding General, U.S. Army Military Personnel Center could approve a reenlistment waiver for former Soldiers who had more than 30 days of lost time.

b. Appendix D (Reenlistment Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted
- RE-3B – Waiver required due to the applicant having lost time
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

7. 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.

8. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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.

9. 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.

10. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//