

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230013088

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 16 October 2023
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 18 October 1985
- Statement from spouse
- Statement from pastor
- Letter, National Personnel Records Center (NPRC), 19 April 2023
- Statement from psychologist, 12 July 2023
- Statement from sister, 28 August 2023

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 indicated on his DD Form 149 that other mental health issues or conditions were related to his request. He was suffering from an undiagnosed mental health condition and is presently being treated for anxiety and depression. He further states:

a. He enlisted during his senior year in high school after recruiters came to his school and he saw a golden opportunity to do something great with his life.

b. After basic training and advanced individual training his life became so much better and was heading in the right direction.

c. In [REDACTED], he married his wife after they had a child together. He returned to Baumholder, Germany and found a church on post where he was able to practice his skills as choir director and traveled around Germany with his church. Life was great for him.

d. In 1981, his wife told him she had sex with someone who was supposed to be his friend. He forgave her but it was a very difficult thing for him to overcome. He felt like he was losing control over his life. He became withdrawn and was too ashamed to tell anyone what was going on with him. He was in a dark place and he was completely lost. He remained married and they moved on with their lives.

e. After a short time he was reassigned to Fort Gillem and after being there for 2 months his wife told him she was pregnant. The doctor told them she was 3 months pregnant. There was a hush in the room as his wife told him what happened. The child was conceived by his wife and his friend.

f. As his life continued in the Army, he found himself acting on an urge to self-pleasure which led to his discharge. He was out jogging behind a housing development on post and stopped near some bushes. A lady came out of her building and saw him and he was reported to the military police. He does not remember the details of what happened but he was discharged for this.

g. After being discharged he and his family moved trying to find employment and a place to live. Life was very hard. By that time they had another child. The child conceived by his wife and friend did not make things any easier. He had attention deficit disorder (ADD). They were young parents and never heard of ADD. He did not deal with his problems well.

h. He and his wife are well on their journey. He has started on his journey to get well mentally. The child they had passed away in 2016 of an enlarged heart which is the same thing his biological father and former friend died of a couple of years later.

### 3. The applicant provides:

a. A statement from his wife, detailing more of his personal story and noting they had been together for 43 years.

b. A statement from the pastor of his church, who had known the applicant since 1983. He continues to be involved in his community, his church, he has remained positive, and he has persevered. He went through a family disruption as an enlisted

Soldier which caused emotional instability of highs and lows which were manifested by severe mood swings. He is seeking professional help for issues that he has suffered and continues to suffer through.

c. A statement from his sister, dated 28 August 2023, telling of his early family life and his pride of joining the Army. She outlines the effects his marriage strife had on him, and notes that he was a loving protector who stayed with his wife after a difficult time.

d. A letter from his doctor stating he is currently receiving help for his symptoms and they are worth further investigation by the Department of Veterans Affairs for service connection.

4. A review of the applicant's service records show:

a. On 20 June 1978, he enlisted in the Regular Army.

b. On 22 December 1980, he reenlisted for 3 years.

c. A Supreme Headquarters Allied Powers Europe (SHAPE) Village International Police Report Number [REDACTED], dated 21 August 1985 to 22 August 1985 reflects the applicant was the subject of an investigation of an indecent exposure incident at a wooded area adjacent to a dependent wife's quarters kitchen window. The witness stated the applicant was exposed from the waist down. He later followed her in his private vehicle and still later noticed his private vehicle parked outside the SHAPE gym. Applicant was interviewed by International Police Investigation Section in conjunction with SHAPE Gendarmerie Judicial Investigators. The applicant admitted he had on several occasions at SHAPE exposed himself in public. He further stated he did not think anyone observed him until this incident. He stated he intentionally exposed himself to the witness on 21 August 1985 and he maintained he did not intentionally follow the witness but was going to the gym to take a shower. He provided a written statement admitting his wrongdoing and he was released on his own recognizance. The incident was reported to his command for their action.

d. On 23 August 1985, his commander referred him for a psychiatric evaluation.

e. On 29 August 1985, he underwent a psychiatric evaluation. An Army Europe Form 3087 (Report of Psychiatric Evaluation) shows the examining psychiatrist diagnosed exhibitionism and noted:

(1) The patient reported that his need to exhibit himself began at about age 20 and had recurred on multiple occasions since then. He denied any arrests, he denied any abnormal or unusual sexual practices, and he was reluctant to provide a coherent history of his sexual abnormality which is true with most exhibitionists.

(2) His mental status was alert, oriented, and manifested no evidence of a psychosis or personality disorder. He was pleasant and animated in conversation, but he skillfully avoided talking about his sexual proclivities. He had the characteristic history and manner of individuals with exhibitionism.

(3) The examining psychiatrist found the above statements were correct. There was no known consistently effective treatment for this condition, and such episodes of exhibiting himself were very likely to recur in the future. Individuals with this disorder rarely go on to violent sexual acts. As this is forbidden behavior in our society, and because the individual generally is not able to successfully control the behavior, the person is subject to manipulation by those who know of the illness.

(4) The examining psychiatrist psychiatrically cleared him for whatever action was deemed appropriate by command.

f. On 3 September 1985, the Commander, Headquarters (HQ) Command, U.S. Army Element, SHAPE, notified the applicant he was initiating action to separate him under the provisions of paragraph 14-12b(2), Section III, Chapter 14, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) and advised him of his rights. The reasons for his commander's proposed actions were: a SHAPE International Police Report, dated 22 August 1985 with complaint of indecent exposure and a report of psychiatric evaluation, dated 28 August 1985. He was advised the least favorable characterization he could receive or description of service he could receive for discharge based on his misconduct was under other than honorable conditions. He was advised of:

- consult the consulting counsel withing a reasonable time or consult with civilian counsel at this own expense
- submit statements in his own behalf
- obtain documents that would be sent to the separation authority supporting the proposed separation
- request a hearing before an administrative board
- present written statements instead of board proceedings
- waive these rights in writing

g. On 5 September 1985, he elected his rights. He waived consideration of his case by a board of officers; he waived a personal appearance before a board of officers; and statements in his own behalf were submitted. He further requested consulting counsel. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He understood that if he received a discharge certificate/character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for

Correction of Military Records for upgrading; however; he realized that an act of consideration by either board does not imply that his discharge would be upgraded.

h. On the same date, several Soldiers who knew him along with his pastor, provided written statements in support of the applicant while he was in the service.

i. On 10 September 1985, The Commander, HQ, U.S. Army Element SHAPE, recommended his separation for misconduct under provisions of Chapter 14, Section III of Army Regulation 635-200

j. On 12 September 1985, the Judge Advocate General reviewed the separation recommendation pertaining to the applicant and found it legally sufficient.

k. On 13 September 1985, his intermediate commander recommended approval of his separation.

l. On an unspecified date, the Commanding General, HQ, U.S. Army Element, SHAPE, approved his separation and directed reassignment to U.S. Army Transfer Point, Fort Dix.

m. On 25 September 1985, he waived a separation medical examination. In signing this waiver, he understood his medical records would be reviewed by a physician at the appropriate medical treatment facility and if the review indicated that an examination should be accomplished, he would be scheduled for examination on the results of the review. His available records contain 55 pages of medical documents dated between 1978 and 1985, which are available for review.

n. On 18 October 1985, he was discharged. His DD Form 214 shows he was discharged under the provisions of paragraph 14-12b, of Army Regulation 635-200 by reason of misconduct-pattern of misconduct, with service characterized as under honorable conditions (General), a separation code of JKM, and a reenlistment code of 3, 3c. He completed 7 years, 3 months, and 29 days of active service. He was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Army Good Conduct Medal (Second Award)
- Army Service Ribbon
- Overseas Service Ribbon

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

7. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that he experienced anxiety and depression due to marital issues that began when he was in-service and contributed to his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 20 June 1978 and re-enlisted one time, 2) the applicant was under investigation for an incident of indecent exposure that occurred on 21 August 1985. More specifically, it was noted that he exposed himself from the waist down while adjacent to a dependent wife's quarters kitchen window. He later followed her in his private vehicle and his vehicle was parked outside of the gym. When interviewed as part of the investigation, the applicant admitted he had exposed himself in public on several occasions and that he did not think anyone observed him until this incident. It was documented that he stated he intentionally exposed himself to the witness though maintained he did not follow the witness was instead going to the gym to take a shower, 3) on 29 August 1985 the applicant was psychiatrically cleared for administrative actions deemed necessary by command, 4) the applicant was discharged on 18 October 1985 under the provisions of Army Regulation (AR) 635-200, paragraph 14-12b, pattern of misconduct, 5) his service records show he was awarded the Good Conduct Medal on two occasions during his service (1<sup>st</sup> award: 20 June 1978 to 19 June 1981; 2<sup>nd</sup> award: 18 June 1981 to 17 June 1984). He was also awarded the Army Achievement Medal for service from 14 June 1981 to 20 May 1983.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. The applicant provided in-service medical records as part of his application. Three Reports of Medical Examination were available dated 02 December 1977 (enlistment), 11 September 1984 (periodic), and 16 October 1985 (separation) which all documented item number 42, psychiatric, as normal on clinical evaluation. His Report of Medical History dated 02 December 1977 documented he indicated that he was in excellent

health and did not endorse any items consistent with BH concerns. The applicant's PULHES on 13 April 1983 was documented as 111111.

4. The applicant was referred for a psychiatric evaluation by his commander on 23 August 1985 following the reported incident of indecent exposure and the applicant's admission during the investigation that he had exposed himself in public on several occasions. On the form, it was documented that the applicant's supervisors felt the applicant may possess the potential for retention if he was able to 'overcome or be treated for his problem.' It was further documented that the applicant did not have any history of nonjudicial punishment or court-martial. In response to a question on the form as to how the applicant gets along on the job, with others in the unit and with his supervisors, the commander commented 'very well in all aspects.' He was psychiatrically evaluated on 29 August 1985. The provider documented that the applicant's need to expose himself began at age 20 and had occurred on multiple occasions since that time. He denied any history of previous arrests and no other paraphilic behaviors though the provider noted that the applicant was reluctant to provide a history of his 'sexual abnormality' which the provider stated was consistent with people who engage in exhibitionism. The provider documented that the applicant did not show any evidence of psychosis or personality disorder. The provider diagnosed the applicant with Exhibitionism (now known as Exhibitionistic Disorder) and psychiatrically cleared him for any actions deemed appropriate by command.

5. There were several letters included as part of the applicant's packet. Regarding the letters submitted by the applicant and his wife, in effect, they assert that the applicant became depressed following his wife's infidelity that resulted in her getting pregnant outside of their marriage. It was noted that the applicant was then acting out of character due to the trauma this caused him. Specific to the misconduct that led to his discharge, the applicant asserts in his self-statement that he had stopped in the woods while jogging one morning and started masturbating to which the witness came out of her building and saw him. He did not express that he intentionally exposed himself to her in his self-statement. The applicant further asserted that due to the stresses of his marital situation, he was using masturbation as a coping mechanism. The applicant also provided statements from other family members, fellow Soldiers who served with him around the time of the incident, and his Pastor while in-service. One letter from a fellow Soldier documented that the applicant began having mood swings after his familial issues started. Another letter dated 05 September 1985 written by the SPECOM Detachment OIC documented that the applicant performed his duties in an 'excellent manner and accepted additional tasks willingly.' He also provided a letter from the Pastor at his place of worship dated 05 September 1985. His pastor noted that the applicant had participated in many community activities that have 'well represented his soundness and potential as a role model.'

A review of JLV shows the applicant is not service-connected for any conditions. The applicant first reached out to the VA for BH services 20 March 2023. On 05 April 2023, the applicant completed his initial intake. It was documented that the applicant endorsed a history of anxiety and depression dating back to his time in the military. The applicant attributed the changes in mood at the time to his wife getting pregnant as the result of an affair. In addition to depression and anxiety, it was also noted that the applicant currently has physical pain which has negatively impacted his quality of life and exacerbated his depressive symptoms. It was also documented that the applicant carries guilt and shame regarding an incident that occurred with his stepson in 1987, whom he said had ADHD and behavioral problems that were not recognized at the time and felt he had snapped. The applicant reported he was charged with 2<sup>nd</sup> degree assault after turning himself in to the police at the time, though he noted he was recently able to get his record cleared. As a result of having a record, the applicant reported he has lost several jobs. There was no other legal history documented in the applicant's record. The applicant denied any history of illicit drug use and endorsed occasional alcohol use though no problematic use was documented. He was provisionally diagnosed with Depressive Disorder, Recurrent Moderate and referred for psychotherapy. At the time of his initial psychotherapy appointment on 11 June 2023, it was documented he was also being treated by a psychiatrist outside of the VA and was prescribed medication (medication not documented). It was noted that the applicant reported he was prescribed Xanax sometime in the 1980s and that he tried to deal with his anxiety and depression 'the best he could.' The applicant was diagnosed with Anxiety Disorder, Unspecified and Major Depressive Disorder (MDD), Recurrent, Moderate. He engaged in treatment on approximately a monthly basis until 31 October 2023. There is no evidence in the available records that the applicant was diagnosed with an Exhibitionistic Disorder nor had legal problems due to this condition post-discharge.

6. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence that the applicant was diagnosed with Exhibitionism in-service, which is not a mitigating condition and falls under the purview of administrative separations. In-service medical records do not indicate any history of BH treatment and it was documented that the applicant did not experience psychosis. In 2023, the applicant was diagnosed with Anxiety Disorder, Unspecified and Major Depressive Disorder, Recurrent, Moderate. Although the applicant is not service-connected for these conditions through the VA, it was documented that the onset of his depression and anxiety began during his time in the military. Given the available documentation, there is insufficient evidence to support BH mitigation.

#### 7. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced anxiety and depression in-



service. The applicant was diagnosed with Anxiety Disorder, Unspecified and Major Depressive Disorder through the VA in 2023.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Exhibitionism in-service, which is not a mitigating condition and does not require disposition through medical channels. In 2023, the applicant was diagnosed with Anxiety Disorder, Unspecified and Major Depressive Disorder through the VA. Exhibitionism is not part of the natural sequelae and history of anxiety and depressive disorders. Anxiety and depressive disorders do not interfere with the ability to distinguish between right and wrong and act in accordance with the right. As such, BH mitigation is not supported.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the lack of mitigation for such misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

2/5/2025

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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), the Board's governing regulation, states applicants are 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 the ABCMR.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - 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. 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.

c. Paragraph 14-12b. A pattern of misconduct. A pattern of misconduct consists of discreditable involvement with civil or military authorities and conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

4. Army Regulation 635-5-1 (Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator JKM corresponded to the narrative reason "Misconduct-Pattern of Misconduct," and the authority, Army Regulation 635-200, chapter 14-12b.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes. Table 3-1 (U.S. Army reentry eligibility codes) reads:

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

6. Army Regulation 635-5 (Separation Documents), Interim Change, in effect on 2 October 1989, implemented by DODI 1336.1, provided updated instructions for completing the DD Form 214. For item 18 (Remarks) instructions read, this must be the first entry in block 18. Enter list of reenlistment periods for which a DD Form 214 was not issued, if applicable, e.g., "Immediate reenlistments this period: 761218-791001; 791002-821001." However, for soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form 214 was not issued, e.g., 761218) Until (date before commencement of current enlistment, e.g., 821001); then enter the specific periods of reenlistments as prescribed above.

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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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 based on 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. 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. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//