

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230013175

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement, dated 14 September 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 14 February 1990
- Department of Veterans Affairs (VA) Rating Decision, dated 23 August 2023

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, in effect, he was awarded a 50 percent (%) disability rating from the VA for post-traumatic stress disorder (PTSD) with alcohol use disorder related to an incident where he was jumped and beaten during his service. He currently has a claim pending for traumatic brain injury (TBI). During his time in service, he experienced mental health issues and physical pain related to the incident. He and his wife separated after the incident, causing him to be a single father, and she wrote bad checks that reflected upon him. Before he was discharged, he received the Army Good Conduct Medal. If the incident would not have happened, he would have been honorably discharged. An upgrade would allow him to receive a home tax deduction.
3. The applicant enlisted in the Regular Army on 19 November 1985 for a 3-year period, with a subsequent reenlistment on 1 November 1988. He held military occupational specialty 31K (Combat Signaler) and attained the rank of specialist/E-4.

4. The applicant was formally counseled on four occasions between 11 January 1989 and 11 July 1989. Areas of emphasis covered in the counseling included, but are not limited to:

- failure to be at the appropriate place at the appropriate time
- failure to pay rent for the months of January and February 1989
- absence from appointed place of duty
- indebtedness

5. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 July 1989, for failure to go at the time prescribed to his appointed place of duty, on or about 2 July 1989, and failure to report to his appointed place of duty, on or about 5 July 1989. His punishment consisted of reduction to private first class/E-3, forfeiture of \$208.00 pay, and 14 days of extra duty and restriction.

6. He was formally counseled on five occasions between 8 September 1989 and 8 November 1989. Areas of emphasis covered in the counseling included, but are not limited to:

- dishonored checks (January 1987 to July 1989)
- letters of indebtedness (January 1987 to July 1989)
- misconduct – discreditable involvement with authorities (military and civilian)
- absence from formation on four occasions

7. The applicant underwent a mental status examination on 5 December 1989. The examining provider determined he had the mental capacity to understand and participate in administrative proceedings.

8. The applicant's immediate commander notified the applicant on 11 December 1989 of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b, for patterns of misconduct. The commander noted the applicant's continued failure to manage his finances and be at his appointed place of duty as reasons for the proposed separation action. The applicant acknowledged receipt on that same date.

9. The applicant consulted with legal counsel on 12 December 1989.

a. He was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of waiving those rights. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge were issued to him, and

further acknowledged that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of an under other than honorable conditions discharge.

b. In an attached statement, the applicant requested to remain in the Army. He further stated, in effect, since his counseling regarding his financial problems, he closed his checking account and enrolled in a financial management program. He moved his family into government housing. He lived up to his commitment and has straightened out his family affairs. He was late for formation, but he was never absent without leave. The problem decreased when he moved closer to his unit. He has a wife and two children to support. It was difficult to make ends meet, but they have turned the corner. He earned the Good Conduct Medal in November 1988. There is insufficient cause to separate him a year later.

10. Subsequently, the commander formally recommended the applicant's separation, prior to the expiration of his term of service, under the provisions of AR 635-200, paragraph 14-12b. He further recommended the issuance of an under honorable conditions (general) characterization of service. On 22 December 1989, the intermediate commander recommended approval of the discharge, further recommending an honorable characterization of service.

11. The separation authority approved the recommended separation, waived the rehabilitative transfer requirements, and directed the issuance of an under honorable conditions (general) characterization of service.

12. A Statement of Option, dated 14 February 1990, shows the applicant elected not to undergo a pre-separation medical examination.

13. The applicant was discharged on 14 February 1990, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct-pattern of misconduct. His DD Form 214 confirms his character of service was under honorable conditions (general), with separation code JKM and reentry code RE-3. He was credited with 4 years, 2 months, and 26 days of net active service. He was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

14. The applicant's service record contains multiple DA Forms 4465 (Army Drug and Alcohol Control Program (ADAPCP) Client Intake/Screening Records) and DA Forms 4466 (ADAPCP Client Progress Reports), 19 December 1986 to 11 November 1989.

15. The applicant provides a copy of his VA Rating Decision, dated 23 August 2023, which shows he has a service-connected disability rating (50%) for PTSD with alcohol use disorder. The examiner noted that [the applicant] reported being assaulted by German civilians while walking down the street on New Year's Eve 1987. He received a hard blow to the head, which caused him to black out. He was taken to a German hospital, where he had x-rays and stitches to the back of his head. His service treatment records document the reported assault and subsequent treatment.

16. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service. He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates 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 (RA) on 19 November 1985 as a combat signaler, 2) the applicant was formally counseled on four occasions between 11 January 1989 and 11 July 1989 for failure to be at the appropriate place at the appropriate time, failure to pay rent for the months of January and February 1989, absence from his appointed place of duty, and indebtedness, 3) the applicant received an Article 15 on 14 July 1989 for two instances of failure to report, 4) the applicant was formally counseled on five occasions between 08 September 1989 and 08 November 1989 for dishonored checks, letters of indebtedness, misconduct-discreditable involvement with authorities (military and civilian), and absence from formation on four occasions, 5) the applicant's commander notified him on 11 December 1989 of his intent to initiate separation under the provisions of Army Regulation (AR) 635-200, Chapter 14, paragraph 14-12b for patterns of misconduct. The commander noted the applicant's continued failure to manage his finances and be at his place of duty as reasons for the proposed action. The applicant was discharged on 14 February 1990, 6) the applicant was awarded the Army Good Conduct Medal during his service.

b. 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.

c. An in-service mental status examination completed on 05 December 1989 was provided for review as part of the applicant's packet. It documented that the applicant had the mental capacity to understand and participate in proceedings. There were several ADAPCP Client Intake Forms (DA Form 4465) available for review. Documentation shows the applicant was first enrolled in the ADAPCP, Track II, for alcohol use on 09 February 1986. A progress report dated 18 May 1987 showed the applicant was released from the program due to program completion, his progress was noted as 'good,' and it was recommended that the applicant be retained on active duty. Another progress report dated 31 May 1988 documented the applicant was released from the ADAPCP, Track II, due to program completion with his progress noted as 'fair' and a recommendation to retain on active duty. The applicant was again recommended for enrollment in the ADAPCP, Track II on 15 February 1989. Subsequent progress notes dated 15 August 1989 and 15 November 1989 documented the applicant's progress in the program as 'good' and 'fair,' respectively. There were no other in-service BH medical records available for review.

d. Military service treatment records that were submitted as part of the applicants VA claims via the Veterans Benefits Management System (VBMS) were reviewed. In-service medical records were available from 14 January 1986 to 14 December 1989. A Report of Medical Examination completed on 09 July 1985 as part of the applicant's enlistment physical noted item number 42, psychiatric, as 'normal' on clinical evaluation. Per the applicant's self-statement and VA documentation, he was physically assaulted by German civilians on New Years eve 1987. A radiologic consultation request Standard Form (SF) 519-B dated 02 January 1988 showed the applicant was evaluated due to being hit in the nose and right parietal skull and was reporting severe parietal headaches. The skull x-rays were documented as negative and nasal findings were noted as questionable for fracture though later documentation indicated a fracture was doubtful. A medical note dated 07 January 1988 documented the applicant was seen for suture removal. At the time of the visit, the applicant endorsed he had been experiencing blackouts since the physical assault and has been getting bloody noses. The diagnosis is illegible to this Advisor (it appears to be contusion or concussion) though noted he was put on a profile for no physical training and light duty for several days (specific time frame illegible to this Advisor) and to return to sick call the following week.

e. A Department of Veterans Affairs rating decision letter dated 23 August 2023 reflects the applicant is 50% service-connected through the VA for PTSD with Alcohol Use Disorder as of 24 January 2023, which is consistent with the available documentation in JLV. The applicant underwent two Compensation and Pension (C&P)

examinations dated 31 May 2023 and 02 December 2023. The exam dated 31 May 2023 documented the applicant was diagnosed with PTSD secondary to personal assault and Alcohol Use Disorder, In Sustained Remission. On 02 December 2023, the applicant underwent a C&P examination for TBI. The Disability Benefits Questionnaire (DBQ) shows the applicant was diagnosed with TBI as well as post concussive headaches and vertigo secondary to TBI. The date of onset for his TBI was documented as New Years eve 1987. Current symptoms associated with the condition were documented as headaches with sensitivity to light and sound, shorter frustration tolerance, moodiness, and inflexibility. His judgment was documented as 'normal.'

f. Per review of JLV, the applicant is service 90% service-connected through the VA, 50% of which is for PTSD. The applicant appears to have initiated BH care through the VA on 05 September 2023 to address history of trauma symptoms, insomnia, and history of TBI. It was documented that the applicant reported sleeping about 4 hours per night, nightmares, and intrusive remembering that leads to depressive thinking. He was referred for psychotherapy and psychiatry for medication management and provisional diagnosis was noted as Trauma/Stressor-Related Disorder, unspecified. A mental health intake note dated 07 November 2023 documented the applicant endorsed experiencing 'intrusive thoughts/memories, nightmares, flashbacks, distress in response to triggers, physiological reactions to triggers, hypervigilance, sleep disruption, avoidance, hyperarousal, distorted memory for traumatic event, detachment, difficulty with trust, irritability, difficulty regulating anger, difficulty with concentration, self-blame, and guilt.' The applicant also reported to the provider having cognitive difficulties following the event including 'poor concentration, short-term memory, remote episodic memory and word-finding difficulty.' He was diagnosed with PTSD, Chronic with rule outs of TBI and alcohol abuse. In November 2023, the applicant was referred for evidence-based treatment of PTSD. The applicant declined psychotherapy at the time but agreed to continue with psychiatry for medication management. He has continued BH care through the VA noting continued problems with symptoms associated with PTSD, cognitive symptoms, mood, sleep, and anxiety. His clinical diagnoses as of 08 July 2024 include PTSD, Chronic, Insomnia, Depression (secondary to PTSD), Anxiety (Secondary to PTSD), with rule outs of TBI and alcohol abuse (though documented in the note he has been sober for 5 years).

g. Civilian medical records from 27 December 2022 to 04 May 2023 from the Access Family Health Center available via the VBMS were reviewed. Available records show the applicant was treated for Generalized Anxiety Disorder and PTSD (ascertained to be through primary care rather than specialty behavioral health based on provider credentials, Physician's Assistant and Nurse Practitioner). A medical note dated 27 December 2022 documented the applicant reported to his provider that his anxiety began while in the military following the physical assault in 1987. He was prescribed Lexapro for the management of anxiety symptoms.

h. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service. He contends he experienced PTSD that mitigates his misconduct. There is evidence that the applicant was referred for alcohol-related treatment in-service as early as February 1986 and periodically through 1989; however, there are no other in-service BH records available for review. Since his discharge, the applicant has been diagnosed with PTSD through the VA and is 50% service-connected for this condition. The identified stressor related to his PTSD diagnosis is an incident wherein he was physically assaulted in 1987. A DBQ dated 02 December 1983 also documented the applicant meets criteria for TBI secondary to the physical assault that occurred in 1987 and has submitted a VA claim for service connection.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant is 50% service-connected through the VA for PTSD. He has also been diagnosed with TBI via a VA C&P examination.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service. The applicant has also been diagnosed with a TBI via a C&P examination.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially. The in-service medical records were void of any in-service BH diagnosis or treatment aside from alcohol use which was documented to have occurred prior to and following the physical assault in 1987. Subsequent to his discharge, the applicant was diagnosed with PTSD through the VA and is 50% service-connected for this condition. Additionally, a C&P examination completed 02 December 2023 documented the applicant meets criteria for TBI secondary to the physical assault that occurred in 1987.

j. The applicant's misconduct included failure to manage his finances and failure to be at his place of duty. New onset of avoidance behaviors such as failure to report are consistent with the natural history and sequelae of PTSD. However, indebtedness and dishonored checks are not consistent with the sequelae of PTSD and this condition does not interfere with the ability to distinguish between right and wrong and act in accordance with the right. Although the applicant has been diagnosed with TBI, there is no documentation available indicating that the applicant meets criteria for a major cognitive disorder nor that he is unable to manage the activities of daily living (e.g., managing finances). Moreover, the C&P examination diagnosing the applicant with TBI documented that he has intact judgment. As such, BH mitigation is partially supported for misconduct related to failure to report.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant displayed a pattern of misconduct (failure to report, missing formation, indebtedness, and dishonored checks). As a result, his chain of command initiated separation action against him. He was separated with a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding the applicant has been diagnosed with a behavioral health condition that partially mitigates his misconduct. The applicant's misconduct included failure to manage his finances and failure to be at his place of duty. Failure to report infractions are consistent with the natural history and sequelae of PTSD. However, indebtedness and dishonored checks are not consistent with the sequelae of PTSD and this condition does not interfere with the ability to distinguish between right and wrong and act in accordance with the right. Although the applicant has been diagnosed with TBI, there is no documentation available indicating that the applicant meets criteria for a major cognitive disorder nor that he is unable to manage the activities of daily living (e.g., managing finances). As such, BH mitigation is partially supported for misconduct related to failure to report.

c. Based on this finding, the Board determined that although there is partial mitigation, the Board believed a general discharge is the appropriate characterization of service in the applicant's case, given his misconduct (extensive negative counseling, NJP, and bad checks). Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

d. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 14 February 1990 to show:

- Block 18 (Remarks): Delete ENLISTMENT THIS PERIOD: 851119 – 881031
- Block 18: Add
  - IMMEDIATE REENLISTMENTS THIS PERIOD 19881101 – 19900214
  - SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
  - CONTINUOUS HONORABLE SERVICE FROM 19790731 UNTIL 19850819

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

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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, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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. AR 635-5 (Personnel Separations), 15 August 1979, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

4. AR 635-200, in effect at the time, 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. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a

member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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; TBI; 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 sexual assault or sexual harassment was unreported, or 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. 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. 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//