

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20230013447

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- personal appearance hearing before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- Two DD Forms 149 (Application for Correction of Military Record)
- Statement in Support of Claim: Education Benefits
- Statement in Support of Claim: Discharge Upgrade
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Bachelor's degree diploma
- Master's degree diploma
- College Transcript
- Department of Veterans Affairs (VA) Rating Decision
- Two VA Certification of Compensation Letters
- Computer Screenshot of VA Disability List
- VA Form 28-0957 (Vocational Rehabilitation Guidelines and Dept Prevention)
- VA Form 28-10214 (Rehabilitation Plan)
- VA Summary of Benefits Letter

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 his discharge should be upgraded to an honorable discharge due to him receiving a service-connected 100 percent (%) disability rating from the VA. He received a 70% disabling diagnosis for post-traumatic stress disorder (PTSD). His abuse of alcohol was his way of dealing with his undiagnosed condition of PTSD that he did not understand at the time of his military service. Mental health was dealt with completely differently in the 1990s than it is today. During his time in the military, it was

frowned upon and discouraged to seek mental health treatment. Without the proper treatment, his behavior included alcohol abuse and an incident of driving under the influence, which ultimately resulted in his separation from the Army. He struggled with mental health during his military service due to PTSD and that triggered him to drink alcohol to deal with the stress and incidents from his occupation and the situations he encountered during his service as an infantryman.

3. The applicant provides:

a. Two statements in support of his discharge upgrade and claim for VA education benefits. Wherein he states he encountered multiple tragic events during wartime efforts that have contributed to his issues adapting back to a normal civilian lifestyle. He provides a synopsis of the adverse impact that his diagnosis of PTSD has had upon his ability to maintain employment.

b. His college transcript, bachelor's degree, and master's degree.

c. A VA Rating Decision letter dated 12 March 2018, showing his evaluation of PTSD was increased to a 70% rating, effective 11 September 2015.

d. A letter from the VA, dated 19 April 2018, certifying his service-connected disability compensation from the VA with a combined evaluation of 70%, effective 1 December 2017.

e. A computer screenshot showing a list of VA disabilities with no identifiable information.

f. A VA Form 28-0957 and VA Form 28-10214 providing details of his vocational rehabilitation plan.

g. A letter from the VA, dated 1 October 2023, certifying his service-connected disability compensation from the VA with a combined evaluation of 70%, effective 1 December 2023.

4. The applicant's service record shows:

a. The applicant enlisted in the Regular Army on 23 September 1993. He deployed to Southwest Asia on 10 October 1994 through 15 November 1994.

b. He was counseled on at least four occasions between 18 April 1994 and 18 March 1996, the DA Forms 4856 (Developmental Counseling Forms) show he was counseled for failing an Army Physical Fitness Test, being relieved of driving duties due

to patterns of misconduct, willfully damaging government property, failing to obey orders, and lying to a non-commissioned officer (NCO).

c. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 26 January 1996, for failing to go to his appointed place of duty at the prescribed time on or about 5 January 1996. His punishment included a reduction to E-2 (suspended until 24 January 1996), forfeiture of \$260 for one month, 14 days extra duty, and restriction.

d. A military police report completed on 22 March 1996, shows the applicant was identified as the driver of a vehicle in an automobile accident off post in Georgia on 16 March 1996. He was transported by ambulance, treated for a head injury, and admitted for observation. He was later cited for driving under the influence of alcohol and without insurance.

e. He underwent command directed mental status evaluation on 18 March 1996. The DA Form 3822-R (Report of Mental Status Evaluation) shows he had the mental capacity to understand and participate in board proceedings; and met retention requirements. He was cleared for administrative separation.

f. On 6 May 1996, the applicant's commander notified the applicant of his intent to initiate actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12b, for patterns of misconduct. Specifically, he noted the applicant's failure to report, disobeying an NCO, destruction of government property, and several traffic violations.

g. On 16 May 1996, the applicant consulted with counsel and acknowledged receipt of the commander's contemplated action. He was advised of the basis for the proposed separation action, his available rights, and the effects of waiving those rights. He was afforded the opportunity to submit a statement in his own behalf.

h. Subsequently, the applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, for patterns of misconduct. The chain command recommended approval with a general characterization of service.

i. On 3 June 1996, the separation authority approved a waiver of further rehabilitative requirements and the recommended separation action with a general discharge.

j. On 17 June 1996, the applicant was discharged accordingly. His DD Form 214 confirms he was discharged in the rank/grade of private/E-2 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-

12b (Pattern of Misconduct). His service was characterized as "Under Honorable Conditions (General). He was credited with completion of 2 years, 8 months, and 25 days of net active service. He did not complete his first full term of service. He received the following awards:

- Army Commendation Medal
- Army Superior Unit Award
- National Defense Service Medal
- Southwest Asia Service Medal with 1 Bronze Service Star
- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends PTSD is related to his request. 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 23 September 1993; 2) The applicant deployed for about one month to Southwest Asia from 10 October-15 November 1994; 3) The applicant was counseled on four occasions between 18 April 1994-18 March 1996 for failing an APFT, being relieved of driving duties due to misconduct, damaging government property, failing to obey orders, and lying to an NCO; 4) The applicant accepted non-judicial punishment (NJP) on 26 January 1996, for failing to go to his appointed place of duty; 5) A military police report completed on 22 March 1996, shows the applicant was identified as the driver of a vehicle in an automobile accident off post. He was later cited for driving under the influence of alcohol and without insurance; 6) On 6 May 1996, the applicant's commander notified the applicant of his intent to initiate actions to separate him from service, Chapter 14, paragraph 14-12b, for patterns of misconduct. Specifically, he noted the applicant's failure to report, disobeying an NCO, destruction of government property, and several traffic violations; 7) On 17 June 1996, the applicant was discharged, Chapter 14-12b (Pattern of Misconduct). His service was characterized as "Under Honorable Conditions (General). He was credited with completion of 2 years, 8 months, and 25 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. On 18 March 1996, the

applicant underwent a Mental Status Exam as part of his administrative separation proceedings for a Chapter 14-12. He was not diagnosed with a mental health condition as a result of this evaluation, and he was psychiatrically cleared for any administrative action deemed appropriate by Command.

d. A review of JLV provided evidence the applicant began to engage with the VA for assistance with emergency physical concerns in 2004. In 2008, the applicant reported to the Emergency Department due to experiencing situationally based depression predominately as a result of occupational and relationship problems. The applicant then began to intermittently engage in behavioral health treatment at the VA, was diagnosed with an Adjustment Disorder, and attended individual and group therapy. The applicant provided an inconsistent report of his military history from his service records, such as he denied any history of misconduct, reported being deployed for over six months and having an honorable discharge. The applicant eventually also started to report some symptoms of PTSD such as nightmares and hypervigilance related to his reported experiences during active service. In 2015, the applicant underwent a Compensation and Pension evaluation and was diagnosed with service-connected PTSD. The applicant continued to intermittently attend behavioral health treatment at the VA, but he was again predominately diagnosed and treated for an Adjustment Disorder. However, it was noted that he was reporting exposure to trauma. Eventually in 2021, the applicant was diagnosed by the VA with PTSD and provided evidence based individual and group therapy. The applicant attended nine sessions till 2022. Currently, the applicant is 70% service-connected for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a mental health condition or experience that partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he experienced PTSD on active service, which mitigates his misconduct. The applicant was diagnosed and treated for an Adjustment Disorder by the VA starting in 2008. Later in 2015, the applicant underwent a Compensation and Pension evaluation and was diagnosed with service-connected PTSD based on his report of traumatic events that occurred during his report of his deployment experiences.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD on active service, which mitigates his misconduct. Later in 2015, the applicant underwent a Compensation and Pension evaluation and was diagnosed with service-connected PTSD based on his report of traumatic events that occurred during his report of his deployment experiences.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence the applicant has been diagnosed with service-connected PTSD as a result of his description of his military experience and corresponding symptoms many years later. The applicant did engage in erratic and avoidant misconduct such as driving while intoxicated, not being on time, and not following orders while on active service, which could be a natural sequelae of PTSD. Yet, there is no nexus between the applicant's diagnosis of PTSD and his misconduct of destruction government property, lying to an NCO, multiple traffic violations, driving without insurance, and failing an APFT in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's PTSD; 2) the applicant's PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a mental health condition or experience that partially mitigates his misconduct. The Board additionally considered the applicant's post-service achievements and determined relief was appropriate to upgrade the applicant's characterization of service to honorable.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 17 June 1996 to show an honorable characterization of service.

X //SIGNED//

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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. 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 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. 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//