

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230013590

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to honorable, with the corresponding narrative reason for separation and separation code changed to Secretarial Authority. Additionally, he requests his reentry eligibility (RE) code be changed to RE-1, and restoration of his rank/grade to sergeant/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Transcript
- Certificates/Diplomas (ten)

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. Through counsel, the applicant states:

a. He served, reenlisted, and earned awards. The applicant was absent without leave (AWOL) on or about 22 November 1999 until 1 December 1999. He made false official statements. One statement, to an investigator, was that he purchased missing TA-50 items at a flea market. He made false security checks, and failed to obey an order of regulation and was derelict in his duties. The administrative board imposed a severely disproportionate and lifelong penalty for relatively minor misconduct that occurred over a brief period tarnishing an otherwise exemplary record of service. The applicant served for 10 years and 11 months. He served with impeccable honor in an airborne infantry unit, including one year, 11 months and 10 days of foreign service.

b. Because the applicant stayed at home for nine days, he was declared AWOL. At the time, he had two young children and a pregnant wife to care for. He did not wantonly shirk his responsibilities to the Army while he was declared AWOL. Rather, he spent time with his children, helped his pregnant wife and prepared for a permanent change of station from Fort Bragg, NC to Fort Riley, KS.

c. The applicant lacked knowledge of being AWOL until he received a phone call informing him of his status. He reported to duty immediately and did not need to be apprehended.

4. The applicant enlisted in the Regular Army on 15 October 1990 for a period of 4 years. His military occupational specialty (MOS) was 31M (Multichannel Communications Systems Operator) and later 31F (Mobile Subscriber Equipment Network Switching Systems Operator).

5. The applicant reenlisted on 24 June 1994, 6 November 1996, and again on 2 August 1999.

6. The applicant was AWOL from 22 November 1999 until 1 December 1999.

7. DA Form 3975 (Military Police Report) shows a founded criminal report for damage to private property, larceny of government property beginning 29 November 1999 and ending on 1 December 1999 pertaining to the applicant. Damage was reported to private property and the investigation disclosed a lock was cut off a wall locker and the contents (TA-50) equipment issued to [REDACTED] and owned by the U.S. Government. Further investigation met with negative results. However, the applicant provided a sworn written statement as to where he had purchased the items reported stolen. Which was false in nature. There was sufficient evidence to title the applicant with false official statement the case was closed as founded/unsolved.

8. The applicant accepted nonjudicial punishment on 1 February 2000 under Article 15 of the Uniform Code of Military Justice (UCMJ) for:

- AWOL on or about 22 November 1999 until 1 December 1999
- with intent to deceive, make statements which were totally false and were then known by the applicant to be so false on or about 3 December 1999, on or about 3 January 2000, on or about 4 January 2000, and on or about 10 January 2000
- willfully failed to make the required battalion security checks from on or about 3 January 2000 to on or about 4 January 2000
- his punishment consisted of reduction from E-6 to sergeant/E-5, forfeiture of \$880.00 pay per month for two months, extra duty, and restriction

9. The applicant appealed the punishment imposed on 7 February 2000 and asked for suspension of the reduction and forfeiture of pay for two months. His wife was unexpectedly pregnant. They were living in a two-bedroom house with two kids, and he needed to find another place of residence. He recently applied for assistance from the State and was denied.

10. The applicant's appeal was granted as follows: the forfeiture of pay for two months was suspended, if not vacated before 29 July 2000.

11. The applicant was counseled on 2 October 2000 of his chain of command's intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The applicant's security clearance had been suspended and later revoked. He could not perform the duties required of his MOS without a security clearance.

12. DA Form 3822-R (Report of Mental Status Evaluation), dated 2 October 2000, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements. There was no evidence of any psychiatric disorder that would warrant treatment or disposition through medical channels. The applicant was cleared for any administrative action deemed appropriate by command.

13. The Report of Medical History and Report of Medical Examination, show the applicant had been hospitalized for suicidal ideation and had a history of type II diabetes.

14. The applicant's commander notified him on 7 December 2000 he was initiating action under the provisions of AR 635-200, Chapter 14-12c, to separate the applicant for misconduct commission of a serious offense for AWOL. He recommended an UOTHC characterization of service.

15. The applicant acknowledged receipt on the same date and desired to submit matters in his behalf.

16. The applicant's commander formally recommended him for separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. The applicant's duty performance was marginal at best. His retention in the Army would have an adverse impact on military discipline and morale within the unit.

17. The applicant consulted with legal counsel on 12 December 2000 and was advised of the basis for the contemplated actions to separate him and of the rights available to him for misconduct under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense.

a. He requested consideration of his case by an administrative separation board. He requested personal appearance before an administrative board, and he requested counsel or representation.

b. He understood he may expect to encounter substantial prejudice in civilian life and he may expect to encounter substantial prejudice in civilian life with the issuance of a UOTHC discharge.

18. The chain of command recommended approval of the request for separation with a UOTHC characterization of service.

19. The applicant's defense counsel requested a delay of the administrative board proceedings until 27 February 2001.

20. The DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) shows on 19 March 2001 the board commenced.

a. The findings show the applicant did commit the actions of misconduct: AWOL, making false statements, and dereliction of duty. The applicant is undesirable for further retention in military service and his rehabilitation is not deemed possible.

b. The recommendation was in view of the above findings. The board recommended the applicant be discharged from the service with a UOTHC discharge certificate.

21. The Legal Review of Discharge, dated 5 April 2001 shows the applicant's discharge was legally sufficient.

22. The applicant's attorney letter, dated 5 June 2001, shows:

a. It was the attorney's understanding that the applicant was recently evaluated for a possible Medical Evaluation Board (MEB) but that military physicians had determined that he was not entitled to a MEB because his condition is not sufficiently serious. The applicant was diagnosed with diabetes. The attorney was concerned that military physicians have underestimated the severity of the applicant's condition perhaps as an accommodation to his chain of command. He is therefore requesting that the applicant be evaluated at Walter Reed Medical Center to ensure a fair, complete, and impartial assessment of his medical.

b. The applicant has a family history of diabetes, and his father suffered kidney failure and underwent dialysis. The attorney wanted to obtain an honest assessment of his current physical condition. His discharge UOTHC would cause considerable

hardship because of his medical condition he would not be entitled to Veteran's Administration (VA) benefits. (Full letter available for review).

23. Orders 241-0257, dated 29 August 2001, issued by Headquarters, 82nd Airborne Division, Fort Bragg shows the applicant's rank as sergeant/E-5.

24. The separation authority approved the recommended separation on 29 August 2001, under the provisions of AR 635-200, Chapter 14-12c, commission of a serious offense and directed the issuance of a UOTHC discharge, with reduction to the lowest enlisted pay grade.

25. The applicant was discharged on 14 September 2001. His DD Form 214 shows he was discharged in the pay grade of private/E-1. He was discharged under the provisions of AR 635-200, paragraph 14-12C, by reason of misconduct (serious offense) with Separation Code JKQ and Reentry Code 3. His service was characterized as UOTHC. He completed 10 years and 11 months of net active service. His awards include the:

- Army Commendation Medal (2nd award)
- Army Achievement Medal (5th award)
- Army Good Conduct Medal
- Noncommissioned Officer's Professional Development Ribbon with numeral 2
- Parachutist Badge

26. The applicant provides:

- a. Service documents and DD Form 214 as discussed above.
- b. Attorney letter, dated 5 June 2001 as discussed above.
- c. A transcript, no name provided, which shows degrees awarded.
- d. Diplomas/certificates that show the applicant's college degrees, college awards, academic achievement and certificates of completion, and certification.

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

28. 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 (EMR – AHLTA

and/or MHS Genesis), 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 is applying to the ABCMR requesting an upgrade of his 14 September 2001 discharge characterized as under other than honorable conditions. He states through counsel that his punishment was excessive and asserts his Administrative Separation Board “ ... made errors in procedure by failing to base their findings and recommendations on the evidence presented to them, and instead made tremendous leaps in logic to warrant their own pre-ordained determinations.” The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 15 October 1990 and was discharged under other than honorable conditions on 14 September 2001 under provisions provided in 14-12c of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Serious Misconduct. There are no imminent danger pay deployments listed on the DD 214.

c. There are no clinical encounters in the EMR.

d. Counsel has listed some of applicant’s violations of the UCMJ which led to his involuntary administrative separation:

“The Applicant was charged with violating the following articles of the UCMJ:

Article 86 - Absence Without Leave, on or about 22 November 1999 until 1 December 1999, Applicant did absent himself from his unit. See Exhibit 7.

Three specifications of violating Article 107-False Official Statements, on or about 3 December 1999, the Applicant said to INV [Investigator] ■ that he purchased missing TA-50 items at a flea market; the Applicant, on 4 and 10 January 2000 told MAJ ■ after completing security checks, he went to Taco Bell; the Applicant entered into the daily staff journal on 3 January 2000, that he made false security checks. See Exhibit 7.

Article 92- Failure to Obey an Order of Regulation; from about 3 January 2000 to 4 January 2000, the Applicant was derelict in his duties when he failed to make the required battalion security checks. See Exhibit 7.”

e. Supporting evidence documents additional UCMJ violations. A military police report shows the applicant was found to have damaged government property and

committed larceny between 1300 on 29 November 1999 and 0730 on 1 December 1999.

f. 7 December 2000, his company commander informed him of the initiation of action to separate her under paragraph 14-12c of AR 635-200:

“The reasons for my proposed action are: You received a Field Grade Article 15 for violations of Article 107, UCMJ (False Official Statements), violations of Article 86, UCMJ (Absent Without Leave), and violations of Article 92 (Dereliction of Duty). This type of conduct is not becoming of a soldier in the US Army and negatively effects the morale within this unit. I am therefore recommending your immediate separation from the US Army.”

g. The applicant underwent a mental status evaluation on 2 October 2000. The provider documented a normal examination, going on to opine the applicant had the mental capacity to understand and participated in proceeding, was mentally responsible, met the medial retention standards of AR 40-501 (Standards of Medical Fitness), that there was no evidence of any psychiatric disorder, and that he was cleared for any administrative action deemed appropriate by his command. On his pre-separation Report of Medical Examination, it is noted the applicant was taking oral medication for type II diabetes. This condition fails medical retention standards and would have been a cause for a referral to the Disability Evaluation System had it not been for his repeated misconduct.

h. His actions and pending discharge for misconduct made him ineligible for DES processing, in this case referral to the medical evaluation board (MEB). Paragraph 4-1a of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

“Uniform Code of Military Justice (UCMJ) action. The case of a soldier charged with an offense under the UCMJ or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for, or continue, disability processing unless

(1) The investigation ends without charges.

(2) The officer exercising proper court-martial jurisdiction dismisses the charges:

(3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such sentence.”

i. There is no evidence any of these criteria was met which would have enabled him to enter DES processing.

j. Paragraph 4-3a-b of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

“a. Except as provided below, an enlisted soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization, of service of under, other than honorable, conditions.

b. If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the general court-martial convening authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.”

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including a 30% rating somatization disorder, a non-mitigating mental health condition. His medical problem list shows he has been diagnosed with PTSD but it is not service connected by the VA.

l. It is the opinion of the ARBA medical advisor that referral of his case to the DES is unwarranted.

m. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? NO: This PTSD is not service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 pattern of misconduct leading to the applicant's separation, to include some involving criminal activities, as well as the findings of the medical review failing to find mitigation for the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's discharge information.

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.

2/13/2025

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, 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

3. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 4a (Grade, Rate, or Rank) 4b (Pay Grade) enter the rank.

b. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

c. Block 25 (Separation Authority), enter the regulatory or other authority cited in the directives authorizing the separation.

d. Block 26 (Separation Code) Obtain correct entry from AR 635–5–1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

e. Block 27 (Reentry Code) AR 601–210 (Active and Reserve Components Enlistment Program) determines RA and USAR reentry eligibility and provides regulatory guidance on the RE codes.

f. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

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 Post-Traumatic Stress Disorder; 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//