

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20230013900

APPLICANT AND HIS COUNSEL REQUEST: correction of the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the service period ending 12 July 1989, as follows:

- upgrade of his under other than honorable conditions discharge
- a change in the narrative reason for separation to reflect "Secretarial Authority" with corresponding separation code

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

- DD Form 149 (Application for Correction of Military Record)
- Affidavit of Applicant
- Counsel's Brief
- DD Form 214

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 and his counsel request the applicant's character of service be changed from other than honorable to honorable or general, under honorable conditions, and the current narrative reason for separation be changed to reflect Secretarial Authority with the corresponding separation code. Other mental health was marked on the DD Form 149 as a condition related to the request. Counsel's full petition is available for review by the Board, and states in part:
 - a. The applicant's overall good character and post-separation conduct should be considered. He has been an honest and hardworking man throughout his life, with a successful career and a commitment to providing for his family. The applicant has shown remorse for his past misconduct and has taken steps towards rehabilitation. The

Wilkie Memo, which guides the ABCMR in making determinations, emphasizes the importance of reviewing a Veteran's character and considering whether they have shown signs of rehabilitation and remorse since the misconduct. In the applicant's case, the applicant has acknowledged his mistake and has experienced decades of remorse.

b. The circumstances that led to the applicant's misconduct should be considered. The applicant committed the misconduct due to financial difficulties and the desire to provide for his family. While he knew it was wrong, he made an uncharacteristically rash decision in a moment of emotional distress. The applicant's military service record should be considered. He had a successful career in the military, utilizing his experience with computers and earning several accolades for his achievements. His misconduct was an isolated incident and does not define his entire military career.

c. The impact of the discharge upgrade on the applicant's life should be considered. A discharge upgrade could provide him with access to benefits and services that he currently does not have, improving his quality of life. While the applicant's misconduct is a serious matter, the ABCMR should consider the totality of his character and conduct, as well as the circumstances surrounding the misconduct. The decision of the ABCMR should be fair and just, considering all relevant factors and applying the principles outlined in the Wilkie Memo. A discharge upgrade would recognize the applicant's overall good character and post-separation conduct, providing him with the second chance that he deserves.

3. The applicant and his counsel provide an affidavit detailing the incidents that led to the applicant's misconduct. The applicant noted that he married his high school sweetheart prior to joining the military. They had two kids together and eventually his family was able to join him. He later received orders [REDACTED] and his wife was not interested in residing there. His marriage began to deteriorate after 9 years, and she took the children and left him. To make matters worse, she returned to her ex-boyfriend and began making false accusations to his leadership which led to his career crumbling. He believed the only way to make his marriage work was to get out of the military and felt the leadership was also ready for him to leave. He was desperate to save his marriage and desperate for money which led to his misconduct. His mental health was in poor condition, and he subsequently had a mental breakdown. He attempted to admit himself to the [REDACTED] due to suicidal ideations, but the doctor shared with him that his career would be over if he followed through. The military did not offer much help, at that time, to Service Members struggling with mental illness. He was offered a "plea deal" and elected separation to save his marriage although it ultimately led to divorce. He now lives with deep regret and remorse for his actions.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 4 August 1980.

b. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 16 May 1989 for one specification of wrongful possession of marijuana, one specification of stealing two microcomputer storage boxes with approximately 21 microcomputer diskettes, a value of about \$100, and one specification of impeding an investigation by military law enforcement.

c. On 1 June 1989, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he may apply to the Army Discharge Review Board or the ABCMR for review of his discharge

d. On 10 June 1989, the separation authority approved the applicant's request for discharge for the good of the service under the provision of AR 635-200, Chapter 10. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

e. On 12 July 1989, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 8 years, 11 months, and 9 days of active service, with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service – In Lieu of Court Martial," with reentry codes 3, 3c. It also shows he was awarded or authorized:

- Army Achievement Medal with 1 oak leaf cluster
- Noncommissioned Officer Professional Development Ribbon
- Good Conduct Medal (2nd award)
- Army Commendation Medal
- Army Service Ribbon

- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

5. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge and a change in the narrative reason for separation to reflect "Secretarial Authority" with corresponding separation code. He contends Other Mental Health (OMH) as related to his request.

b. 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:

- The applicant enlisted into the Regular Army on 4 August 1980.
- A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 16 May 1989 for one specification of wrongful possession of marijuana, one specification of stealing two microcomputer storage boxes with approximately 21 microcomputer diskettes, a value of about \$100, and one specification of impeding an investigation by military law enforcement.

- On 1 June 1998, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
- On 12 July 1989, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 8 years, 11 months, and 9 days of active service, with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as “For the Good of the Service – In Lieu of Court Martial,” with reentry codes 3, 3c.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant and his counsel provide an affidavit detailing the incidents that led to the applicant’s misconduct. The applicant noted that he married his high school sweetheart prior to joining the military. They had two kids together and eventually his family was able to join him. He later received orders [REDACTED] and his wife was not interested in residing there. His marriage began to deteriorate after 9 years, and she took the children and left him. To make matters worse, she returned to her ex-boyfriend and began making false accusations to his leadership which led to his career crumbling. He believed the only way to make his marriage work was to get out of the military and felt the leadership was also ready for him to leave. He was desperate to save his marriage and desperate for money which led to his misconduct. His mental health was in poor condition, and he subsequently had a mental breakdown. He attempted to admit himself to the [REDACTED] due to suicidal ideations, but the doctor shared with him that his career would be over if he followed through. The military did not offer much help, at that time, to Service Members struggling with mental illness. He was offered a “plea deal” and elected separation to save his marriage although it ultimately led to divorce. He now lives with deep regret and remorse for his actions.

d. In his affidavit, the applicant further states, “I started taking things from work. They were things of minor value. These items were office supplies, batteries, floppy disks, a dictionary, etc. I was hoping to resell these items for a small amount of money. I knew this was wrong and I knew if I got caught, it would be a good possibility that I would get kicked out of the military. I suspected the military had suspicions about my activity and was going to search my house. At my lowest, I asked my friends - who I knew were all honorable men - to help intervene and clean my apartment of the contraband. And my friends, as they should have, turned me in. This added obstruction of justice to my offenses in the military.”

e. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in military service. However, in a memorandum to

command dated 1 June 1989, the applicant reports experiencing a “breakdown” due to the loss of his family. No medical documentation is available substantiating the applicant’s statement.

f. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of OMH.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends Other Mental Health (OMH) on his application as related to his request. However, provides no medical documentation.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to possession of marijuana, larceny of government property, and obstruction of justice. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis. Per Liberal Consideration guidelines, the applicant’s self-assertion of OMH would not mitigate larceny and obstruction of justice. Even if he were experiencing distress over the departure of his wife with their children, his misconduct evidenced purposeful conscious decision-making, with the applicant, via his own admission, repeatedly engaging in theft of government property and obstruction of justice to cover-up his misconduct and avoid the consequences of his actions. Larceny and obstruction of justice are not part of the natural history or sequelae of any mental health condition and, even if symptoms of a mental health condition such as anxiety or depression were present, at the time of his misconduct, they do not impact one’s ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered counsel's statement, the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. Other than his and counsel's statements, the applicant provided no evidence of post-service achievements, and he provided no letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

3/4/2025

X

CHAIRPERSON
Signed by: USA

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entries "Continuous honorable active service from 19800804 to 19880804//Soldier has completed first full term of service."

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

3. Army Regulation 635-5 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.

a. For Block 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "For the Good of the Service – In Lieu of Court Martial" in accordance with AR 635-200, Chapter 10.

5. 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 post-traumatic stress disorder (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.

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 DRBs and BCM/NRs 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, 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.

7. 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.

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 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.

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.

8. 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//