

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20230014030

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his last name as [REDACTED]
- upgrade of his character of service from under conditions other than honorable to honorable
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record), 26 September 2023
- Birth certificate
- Driver's License
- Social Security Card

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 states he entered the military young and to get away from the abuse from home only to experience some of the same treatment with mental abuse while serving. Additionally, he suffered separation anxiety from his family.
3. On his DD Form 149, he annotates post-traumatic stress disorder (PTSD) is related to this request.
4. A review of the applicant's service records shows the following:
  - a. He enlisted in the Regular Army on 6 February 1979, for a 3-year period, with the last name of [REDACTED]

b. The highest rank he attained was private/E-1.

c. On 17 March 1981, court martial charges were preferred against him for violation of the Uniform Code of Military Justice (UCMJ) for going absent without leave (AWOL) on or about 20 July 1979 and remaining AWOL until on or about 13 March 1981.

d. He consulted with legal counsel on 20 March 1981. After consulting with counsel, he executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

(1) He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

(2) Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under conditions other than honorable character of service, and of the procedures and rights available to him.

(3) He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

e. On 30 March 1981, his immediate and intermediate commander's recommended approval of his request for discharge for the good of the service and further recommended issuance of an under conditions other than honorable discharge.

f. The separation authority approved his request for discharge on 2 April 1981, directed he be reduced to the lowest enlisted grade and issued a DD Form 794A (Under Other than Honorable Conditions Discharge Certificate).

g. He was discharged accordingly on 27 May 1981, under the provisions of AR 635-200, Chapter 10, in the grade of E-1. His DD Form 214 shows his service was characterized as under conditions other than honorable with reenlistment code RE-3, 3B. He served 7 months and 11 days of net active service with time lost from 23 May 1979 to 10 June 1976 and from 20 July 1979 to 12 March 1981.

5. He additionally provides his birth certificate, driver's license, and social security card all showing his last name as [REDACTED]

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

7. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends that his request is related to his experience of PTSD that impacted the circumstances of his discharge. 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 entered the Regular Army on 6 February 1979; 2) On 17 March 1981, court martial charges were preferred against him for going AWOL from 20 July 1979 to 13 March 1981; 3) The applicant was discharged on 27 May 1981, Chapter 10- "Admin Discharge Triable by Court-Martial" He completed 7 months and 11 days of net active service. His military service was characterized as under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD during his active service that impacted his conduct resulting in his discharge. The applicant noted in his application that he experienced trauma prior to military service that also impacted him during his time in service. However, there is insufficient evidence that the applicant reported or was diagnosed with PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that 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 was experiencing PTSD, which mitigates his misconduct. The applicant asserted that he experienced trauma prior to his time in service that impacted him during his time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD at the time of his active service that mitigates his misconduct. The applicant asserted that he experienced trauma prior to his time in service that impacted him during his time in service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as going AWOL that could be determined to be avoidant behavior. Avoidant behavior can be a natural sequelae PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 applicant was charged with being absent without leave from 20 July 1979 and remaining AWOL until on or about 13 March 1981, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the

characterization of service the applicant received upon separation was not in error or unjust.

2. The Board considered the following Kurta Questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD, which mitigates his misconduct. The applicant asserted that he experienced trauma prior to his time in service that impacted him during his time in service.

b. Did the condition exist, or experience occur during military service? Yes, the applicant contends he experienced PTSD at the time of his active service that mitigates his misconduct. The applicant asserted that he experienced trauma prior to his time in service that impacted him during his time in service.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as going AWOL that could be determined to be avoidant behavior. Avoidant behavior can be a natural sequelae PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

3. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The evidence presented does not demonstrate the existence of a probable error or injustice. The applicant used the contested name during his entire period of service. The Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. Based on the service record and a preponderance of the evidence, the Board denied relief.

a. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

b. The applicant is advised that a copy of this decisional document, along with his application and the supporting evidence he provided, will be filed in his official military

records. This should serve to clarify any questions or confusion regarding the difference in the name recorded in his military records and to satisfy his desire to have his name documented in his military records.

4. 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

:	:	:	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.

4/15/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.
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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
  - b. 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.

c. 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.

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. 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.

//NOTHING FOLLOWS//