

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20240000007

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

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

DD Form 149 (Application for Correction of Military Record)

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 his Army doctor gave him a medical discharge, but his First Sergeant had his discharge changed to an under honorable conditions (general) discharge. He never got into any trouble and was mentally disturbed, and still is mentally disturbed. He believes the Army caused his mental condition and he needs help because he was wrongfully discharged. He further states that his military medical records for the last part of 1970 and early 1971 show the facts. The applicant notes other mental health issues as conditions related to his request.
3. The applicant enlisted in the Regular Army on 12 July 1971 for 3 years. The highest rank/grade he held was private/E-2.
4. On 6 January 1972, the applicant underwent a complete psychiatric evaluation as part of his consideration for discharge due to his misconduct. The examining psychiatrist found the applicant was immature, manifested by inability to adjust to the military environment; emotional instability, nervousness, and other symptoms of chronic anxiety; labile control of emotional responses to minor environmental stresses resulting in weeping with extreme nervousness and anxiety. It also shows the applicant had poor rehabilitative potential and he enlisted in the Army with unrealistic expectations, existed prior to service. The psychiatrist strongly recommended administrative separation.

5. On an undisclosed date, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability).
6. On 12 January 1972, the applicant's commander formally recommended the applicant's separation from service with a general discharge, under the provisions of Army Regulation 635-212, by reason of unsuitability. As reasons for the proposed action, his immediate commander cited the applicant's character and behavior disorders and noted all attempts at counselling and rehabilitation had failed.
7. On 14 January 1972, the applicant acknowledged receipt of his commander's notification, consulted with counsel, and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He waived his right to a hearing before a board of officers and elected not to submit statements in his own behalf.
8. The applicant's intermediate commander also recommended the applicant's separation from the service with a general discharge under the provisions of Army Regulation 635-212, by reason of unsuitability. As reasons for the proposed action, his intermediate commander noted the applicant could not be relied upon to accomplish tasks under pressure or adverse conditions. He also cited unproductive efforts to counsel the applicant and the applicant's inability to accept criticism or correction without becoming highly emotional.
9. On 17 January 1972, the applicant underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination shows he was qualified for separation.
10. On 20 January 1972, the separation authority approved the recommended separation action and directed the issuance of DD Form 257A (General Discharge Certificate).
11. The applicant was discharged on 26 January 1972, in the grade of E-2, under the provisions of Army Regulation 635-212. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as under honorable conditions (general), with separation program number 264 (Unsuitability - character and behavioral disorders). He was credited with 6 months and 15 days of net active service this period.
12. The applicant's records shows:
 - a. He enlisted in the Army National Guard on 4 January 1974 and was honorably discharged on 3 January 1975.

b. He enlisted in the U.S. Army Reserve on 10 July 1979. His DD Form 214 for the period ending 1 November 1979 shows he was released from control of the Army by reason of misconduct – fraudulent entry.

13. On 26 March 2024, the Case Management Division (CMD), Army Review Boards Agency (ARBA), sent a letter to the applicant requesting additional documentation related to the applicant's contention of mental health issues. To date, no additional documentation has been received from the applicant.

14. Regulatory guidance in effect at the time provided Soldiers separated because of unsuitability under the provisions of Army Regulation 635-212 would be discharged with an honorable or general discharge as warranted by the individual's military record.

15. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 149, the applicant indicated that his discharge was related to Other Mental Health Issues. More specifically, the applicant asserts that he was given a medical discharge by a doctor but that his First Sergeant had it changed. 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 12 July 1971, 2) the applicant underwent a psychiatric examination on 06 January 1972 as part of his consideration for discharge due to misconduct and was recommended for administrative separation, 3) on 12 January 1972 the applicant's commander recommended the applicant for separation under the provisions of Army Regulation (AR) 635-212, by reason of unsuitability. The reasons for separation were noted as the applicant's character and behavior disorders and noted all attempts at counseling and rehabilitation had failed. Furthermore, the applicant's commander recommended a general discharge noting that the applicant 'could not be relied upon to accomplish tasks under pressure or adverse conditions.' The commander further stated that the applicant was unable to accept criticism or correction without becoming 'highly emotional.' 4) the applicant was discharged on 26 January 1972 under the provisions of AR 635-212, with SPN 264 (unsuitability-character and behavioral disorders), with reenlistment codes of RE-3 and 3A, 5) the applicant enlisted in the Army National Guard on 04 January 1974 and was honorably discharged on 03 January 1975, 6) he enlisted in the U.S. Army Reserve on 10 July 1979 and his DD Form 214 for the period ending 01 November 1979 shows that he was released by reason of misconduct-fraudulent entry.

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. The applicant underwent an in-service psychiatric evaluation on 06 January 1972 for the purposes of clearance for separation. The provider documented the findings as 'Personality, immature, manifested by inability to adjust to military environment.' It was noted that the applicant was emotionally unstable, exhibited nervousness, labile control of emotional responses to minor environmental stresses, and withdrawal from personal relationship. The provider further documented the applicant's rehabilitative potential as poor with a 'severe predisposition of lifelong history of adaptation problems, problems with adjustment to authority, poor social adaptation, marginal industrial adaptation, and mismanagement of anxiety feelings in the past.' It was documented that the applicant did not meet criteria for a mental condition that would warrant consideration for 'treatment, hospitalization, or other disposition via medical channels.' The provider documented that the applicant was able to distinguish right from wrong and capable of adhering to the right. The applicant was cleared for administrative actions as deemed necessary by his command and the provider recommended administrative separation. Of note, line of duty was noted as 'no, EPTS' (existed prior to service). The provider further recommended that a security clearance should be denied. His Report of Medical Examination conducted on 17 January 1972 for the purposes of separation documented item number 42, psychiatric, as 'normal' and he was medically cleared for separation.

d. JLV was void of any medical records.

e. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. The applicant indicated that his discharge was related to Other Mental Health Issues. Review of the available in-service medical records indicates that the applicant was psychiatrically evaluated as part of his separation processing to which the provider noted the findings as 'Personality, Immature, manifested by inability to adjustment military environment.' Moreover, it was noted that the applicant had a lifelong history of adaptation problems and the provider documented that the condition existed prior to service. The applicant was cleared for administrative separation and noted that the applicant did not have a condition that warranted disposition through medical channels. Although the diagnosis that led to the applicant's discharge is outdated, it would fall under the purview of AR 635-200, Chapter 5-14 Other Designated Physical or Mental Conditions.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he had Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's available in-service BH records show that the applicant's BH condition was noted as 'Personality, Immature, manifested by inability to adjustment military environment.' The provider further documented that the applicant did not have a condition that warranted disposition through medical channels and recommended administrative separation. There was no medical documentation available for review following the applicant's discharge from the military. Under today's standards, the applicant's discharge based on his condition would fall under AR 635-200, Chapter 5-14 Other Designated Physical or Mental Conditions. As there is no evidence of misconduct and the applicant was discharged due to a medical condition not amounting to disability, upgrading his characterization of service to 'Honorable Discharge' is consistent with current regulations (AR 635-200, paragraph 5-1).

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the military record failing to show any misconduct leading to the applicant's separation and the findings and recommendation in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

3/6/2025

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. Title 10, U.S. Code, 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 635-200 (Personnel Separations – Enlisted Personnel), provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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

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

4. Army Regulation 635-212, then in effect, provided the policy, procedures, and guidance for eliminating enlisted personnel for unfitness and unsuitability. Action would be taken to separate an individual for unsuitability when it was clearly established that it was unlikely that they would develop sufficiently to participate in further military training and/or become a satisfactory soldier and they met retention medical standards. Individuals were subject to separation by reason of unsuitability when one or more of the following conditions existed: inaptitude, character and behavior disorders, apathy alcoholism, enuresis, and homosexuality. An individual separated by reason of unsuitability will be furnished an honorable or general discharge certificate as warranted by their military 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 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.

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 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, 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.

//NOTHING FOLLOWS//