

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240000990

APPLICANT REQUESTS:

- reconsideration of an upgrade of his under honorable conditions (General) discharge to honorable
- a video/telephonic appearance before the Board

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

- Three DD Forms 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim), Applicant
- VA Form 21-4138, Veteran Services Office (VSO) Representative
- Awards and Recognition (x15)
- General Discharge Certificate
- Promotion Documents
- DA Form 2166-6 (Enlisted Evaluation Report)
- Returned Checks
- Credit Union Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of the Army (DA) Finance Office Letter, 30 August 1985
- DA Finance Office Letter, 27 October 1988
- Social Security Administration (SSA) Office Letter, 24 April 2013

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110015527 on 7 February 2012.
2. The applicant states he is requesting an upgrade of his under honorable conditions (General) discharge to honorable. The applicant marked post-traumatic stress disorder (PTSD) and other mental health on his DD Form 149 as conditions related to his request.

a. He believes he was wrongfully terminated, and it was an injustice. He had an exemplary record of service, as evidenced by his awards recommendation and promotions received during his service period. He helped a fellow Soldier and loaned him money due to an emergency. The loan resulted in his account defaulting and a check he wrote bounced. The “wrongful termination” caused him to lose his entire military career. His life was ruined, and it caused financial hardship on his family. He was required to pay back his reenlistment bonus with added interest. He would like to clear his name and wants everything back that was taken from him from day one.

b. He was required to report his first sergeant (1SG) for drunkenness. He was performing Charge of Quarters (CQ) duty and felt it was his responsibility. Failure to report the 1SG would have been a dereliction of duty. He felt he was responsible for the care of the unit at the time. The applicant did not provide further information regarding the outcome.

3. The applicant provides:

a. A VA Form 21-4138 from the applicant dated 12 October 2023, wherein the applicant states he personally witnessed a fellow Soldier get severely injured during an exercise at the National Training Center (NTC). The applicant was serving as the gunner and when the tank slid into a ditch, his upper teeth were damaged. The applicant also reiterated he reported the 1SG during his CQ duty for drunkenness. And finally, the bad check was due to a misunderstanding which caused a significant financial hardship on his family. The applicant felt the general discharge was a punitive action that he did not deserve.

b. A VA Form 21-4138 from the VSO representative dated 20 July 2011 reiterated the applicant’s concerns and challenges reporting his 1SG and the misunderstanding with the insufficient funds.

c. Documents (x15) noting the applicant’s awards and recognition, were previously considered, including:

- 28 April – 31 July 1981, Certificate of Training for Basic Armor Training
- 31 July 1981 – Completion of One Station Unit Training
- 11 December 1981 – Letter of Appreciation, Change of Command Ceremony
- 4 August 1982 – Army Achievement Medal
- 6 October 1981 – Certificate of Promotion to Specialist
- 11 December 1982 – Certificate of Achievement (REFORGER 1982)
- 1 October 1983 – Completion of Primary Leadership Development Course
- 30 August 1983 – Honorable Discharge Certificate
- 2 September 1981 – Certificate of Achievement (Annual ARTEP)
- 28 February 1982 – Certificate of Achievement (Tank Crew Qualification Run)

- 8 January 1984 – Army Achievement Medal
- 2 February 1984 – Good Conduct Medal
- 25 April 1984 – Army Achievement Medal
- 16 November 1984 – Completion of Facility Engineer Self-Help Training
- 13 December 1984 – Certificate of Achievement (Additional Duties)

d. A General Discharge Certificate from the United States Army effective 22 April 1985.

e. Two promotion documents show the applicant was considered for promotion 13 April 1983 and did not show up for promotion points recomputation on 5 May 1983.

f. A DA Form 2166-6 (Enlisted Evaluation Report) describes the applicant as a young leader who strives to improve his knowledge of his job and duties. Although he was inexperienced, his performance in his duty position had been exceptional.

g. Three returned checks:

- 15 January 1985 – written to the applicant, Check #342, for \$400.00, returned not paid due to account being closed
- 5 February 1985 – written to the applicant, Check #344, for \$400.00, returned not paid due to account being closed
- 31 January 1985 – written by the applicant for \$5.80, Check #106, returned for nonsufficient funds

h. A letter from the credit union dated 27 March 1985, indicated two checks were written to the applicant, each in the amount of \$400.00, and were unpaid due to the individual closing his account.

i. Two letters from the U.S. Army Finance and Accounting Center:

- 30 August 1985 – letter of indebtedness for \$4893.14
- 27 October 1988 – letter of indebtedness for \$3508.13

j. A letter from SSA dated 24 April 2013, notified the applicant a fully favorable decision was made in his case and he was determined to be disabled.

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

a. He enlisted in the Regular Army on 3 February 1981.

b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 11 August 1981 through 14 November 1983.

c. He accepted nonjudicial punishment for the below listed offenses:

- 13 December 1984 – disrespectful in nature by walking away while superior commissioned officer was addressing him
- 18 March 1985 – failure to go to his appointed place of duty; his punishment included reduction to specialist (SPC), E-4

d. On 26 March 1985, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. The reasons for his proposed action were the applicant's unsatisfactory performance consists of failing to be at his appointed places of duty at prescribed times without authority, disrespect to both officers and noncommissioned officers, and uttering a worthless check. Counseling and nonjudicial punishments have been ineffective.

e. On 27 March 1985, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under honorable conditions is issued to him
- he may apply to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge

f. The immediate commander-initiated separation action against the applicant for unsatisfactory performance.

g. On 11 April 1985, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, for unsatisfactory performance. He would be issued a General Discharge Certificate.

h. On 22 April 1985, he was discharged from active duty with a under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 4 years, 2 months, and 20 days of active service with no lost time. He was assigned Separation Code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Good Conduct Medal
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Pistol Bar (.45 Caliber)
- Army Achievement Medal

- Noncommissioned Officer Professional Development Ribbon

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

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

7. On 7 February 2012, the ABCMR rendered a decision in Docket Number AR20110015527. The Board found the applicant's duty performance was tarnished by 2 instances of NJP and a considerable period of negative counseling. His administrative separation was accomplished in compliance with applicable regulations with no indication of procedural errors which would have jeopardized his rights. The evidence of record shows he consulted with counsel, and he was advised of the basis for the separation action. Based on his record of indiscipline, including multiple instances of misconduct, his service clearly did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, he was not entitled to the requested relief.

8. By regulation, (AR 15-185) an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

9. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

10. 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.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (General) discharge to honorable. He contends PTSD mitigates his discharge.

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:

- Applicant enlisted in the Regular Army on 3 February 1981.
- DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 11 August 1981 through 14 November 1983.
- He accepted nonjudicial punishment for the below listed offenses:
- 13 December 1984 – disrespectful in nature by walking away while superior commissioned officer was addressing him
- 18 March 1985 – failure to go to his appointed place of duty; his punishment included reduction to specialist (SPC), E-4
- On 26 March 1985, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. The reasons for his proposed action were the applicant's unsatisfactory performance consisting of failing to be at his appointed places of duty at prescribed times without authority, disrespect to both officers and noncommissioned officers, and uttering a worthless check. Counseling and nonjudicial punishments have been ineffective.
- On 7 February 2012, the ABCMR rendered a decision in Docket Number AR20110015527. The Board found the applicant's duty performance was tarnished by 2 instances of NJP and a considerable period of negative counseling. His administrative separation was accomplished in compliance with applicable regulations with no indication of procedural errors which would have jeopardized his rights. The evidence of record shows he consulted with counsel, and he was advised of the basis for the separation action. Based on his record of indiscipline, including multiple instances of misconduct, his service clearly did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, he was not entitled to the requested relief.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he is requesting an upgrade of his under honorable conditions (General) discharge to honorable. The applicant marked post-traumatic stress disorder (PTSD) and other mental health on his DD Form 149 as conditions related to his request. "He believes he was wrongfully terminated, and it was an injustice. He had an exemplary record of service, as evidenced by his awards recommendation and promotions received during his service period. He helped a fellow Soldier and loaned him money due to an emergency. The loan resulted in his account defaulting and a check he wrote bounced. The 'wrongful termination' caused him to lose his entire military career. His life was ruined, and it caused financial hardship on his family. He was required to pay back his reenlistment bonus with added interest. He would like to clear his name and wants everything back that was taken from him from day one."

d. Due to the period of service, no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD.

f. A C and P examination, dated 8 August 2013, diagnosed the applicant with PTSD, however the reported index trauma did not meet diagnostic criteria for PTSD. The applicant indicated, "he was harassed because he reported a superior officer for being drunk. Patient reports that he was demoted and was discharged because of his actions. He reports being traumatized by the way he was treated by the military." A second C and P examination, dated 8 May 2014, notes the applicant is a non-combat veteran and diagnosed him with Somatic Symptom Disorder, Unspecified Anxiety Disorder, and Insomnia Disorder due to medical and non-sleep disorder mental comorbidity. The psychologist noted, "according to records and today's exam, the veteran has been very fixated on the perceived wrongs he has experienced from the military and postal service, which he holds blame for all of his current complaints. According to records, he has attempted to seek disability on several occasions in the past but has been denied." The psychologist opined on 25 August 2014, "there is no evidence that the veteran ever received mental health treatment during the service, and according to records he was not diagnosed or treated for a mental condition until 2011, around the time he began filing his claims for disability. As such, I opine that his current mental condition was less likely than not incurred during the service as there is no evidence of a formal psychiatric condition in military records, or treatment of a mental condition until many years after the service". On 5 September 2014, the psychologist further opined the current diagnosis that was provided was a correction of the error that occurred in the prior diagnosis of PTSD. "Current records support a diagnosis of a somatoform disorder, and at the time of the exam, the veteran did not meet criteria for PTSD. While the veteran describes a stressful situation in the service, his stressor does not meet criterion A for PTSD as he does not report being exposed to actual or threatened death, serious injury, or sexual violence as outlined in the DSM." On a third C and P examination, dated 18 August 2015, the applicant changed the contention of his claim and was diagnosed with PTSD and Somatic Symptom Disorder. The PTSD diagnosis was based on the applicant claiming he experienced horrific tank accidents during his Army service. "He described that the worst incident was when he was driving in Germany and he witnessed someone whose stomach was blown up. He was right on the spot and saw the blood. He described another 5 incidents of when he was inside a tank and, in another case saw the jaw of another soldier injured."

g. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD.

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

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. Although there is no evidence of the applicant receiving mental health services during his time in service, he is service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. Contrary to the applicant's assertion of having an exemplary record of service, he was discharged due to unsatisfactory performance for consistently failing to be at his appointed places of duty at the prescribed times without authority, disrespect to both officers and noncommissioned officers, and uttering a worthless check. Although the treatment record appears to call into question the applicant's diagnosis of PTSD, since he is service connected for the disorder, the diagnosis is accepted by this advisor. Given the association between PTSD and avoidance, the applicant's misconduct of failing to be at his appointed places of duty is mitigated by his BH condition. In addition, given the association between PTSD and difficulty with authority, his misconduct of disrespect to both officers and noncommissioned officers would also be mitigated by his BH condition. However, his misconduct of uttering a worthless check and issues with indebtedness are not part of the natural history or sequelae of PTSD. Specifically, PTSD does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board



notwithstanding the advising official finding sufficient, though conflicting evidence, to support the applicant had a behavioral health condition during military service that mitigates his discharge. The Board found insufficient evidence of in-service mitigating factors to overcome his unsatisfactory performance.

2. The Board determined the applicant's misconduct of uttering a worthless check and issues with indebtedness are not part of the natural history or sequelae of PTSD. Specifically, PTSD does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions. The applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting partial relief.

3. 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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amend the DD Form 214 for the period ending 22 April 1985 by adding the following entries in item 18 (Remarks):

- "SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE"
- "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 19810203 to 19820830."

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to reconsideration of an upgrade of the applicant's under honorable conditions (General) discharge to honorable.



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): N/A

REFERENCES:

1. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

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. Paragraph 3-7a (Honorable Discharge) states 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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

3. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks):

a. 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. To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

c. Routinely, a RA Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract. A prior service enlistee is considered to be on a second term of military service, even if that Soldier fails to complete the current term of service, the appropriate entry is "HAS".

4. 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.

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 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.

6. 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.

7. 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//