

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240001043

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 4 December 2023
- self-authored statement

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, in effect, earlier in his career he had outstanding military service, and it was not until he went to Panama where he started to experience issues. During this assignment, he observed a certain civilian misusing government properties and funds for the benefit of friends and family, and he had a meeting with the Director of the office. The Director informed him an investigation would be conducted, to which the applicant ended up getting multiple urine tests. The first and second urine test came back negative for drugs and his third test was positive. He believed his separation was in retaliation for reporting the misuse of government properties and funds, it was referenced in his court-martial; however, was ignored. He believes he was a victim of Panama as the President of Panama was indicted for coercion a year later.
3. On his DD Form 149, the applicant indicates that other mental health is related to his request.
4. The applicant enlisted in the Regular Army on 17 June 1975. He reenlisted on 8 March 1978 and on 23 December 1980. He extended his reenlistment on 10 March 1982, for 19 months to meet the service remaining requirement for an overseas

assignment. He conducted his final reenlistment on 18 June 1985, for an additional 4 years.

5. He was awarded the military occupational specialties of 71L (Administrative Specialist) and 71B (Clerk Typist). The highest rank he attained was staff sergeant/E-6.

6. The applicant's official military record is void of the facts and circumstances leading to his notification of separation. On 4 August 1986, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12d, for abuse of illegal drugs. The commander noted the specific reason as the applicant's positive urinalysis test submitted on 27 May 1986.

7. The applicant acknowledged receipt of the notification for separation and consulted with counsel on 4 August 1986. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration of his case and a personal appearance before a board of officers, he requested representation by military counsel or civilian counsel at no expense to the government. He further understood he may encounter prejudice in civilian life if an under honorable conditions (general) discharge was issued to him. He additionally elected to submit a statement in his own behalf:

a. He requested the separation authority consider his statement without having to face the painful experience which the Board of Officers represented. He believed his military career was at stake, and he detailed his military career from basic training to advanced individual training, his accolades of competing for Soldier of the Year, his promotions, his letter of appreciation, and certificate of achievement.

b. While working at his duty station in Panama, he was given several urine tests with negative results. With various issues found while working in the office, and observations of an employee misusing government property and funds, he believed this employee wanted to destroy his career. The employee ended up giving him three urine tests on 27 May 1986, due to random reasons. He believed the proper procedures were not followed in collecting urine samples.

c. He knew and could affirm he never used drugs in his entire life. After his 10 years in the Army, he stated using drugs was not a recreation in which he could afford. The well-being of his family, his career, and self-respect depended on the decision the Command would take based on a machine result.

8. On 4 September 1986, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, paragraph 14-12d, for abuse of illegal drugs.

9. The administrative separation board found the applicant did commit an act of misconduct in his use of an illegal substance, to wit: cocaine and that he did abuse trust vested in him by using his position in the Alcohol and Drug Abuse Prevention and Control Program for his own personal gain. The administrative separation board recommended the applicant be discharged due to misconduct with issuance of a under honorable conditions (general) discharge.

10. The separation authority approved the findings and recommendations by the administrative elimination board which convened on 10 October 1986, further directing the applicant receive an under honorable conditions (general) discharge certificate.

11. The applicant was discharged on 5 January 1987, under the provisions of AR 635-200, Chapter 14, by reason of misconduct – abuse of illegal drugs, in the grade of E-6. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (general). He was credited with 11 years, 6 months, and 19 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Service Ribbon
- Expert Marksmanship Qualification Badge (Rifle)
- Drivers Badge
- Army Achievement Medal (2)
- Army Commendation Medal
- Army Good Conduct Medal (3)
- Noncommissioned Officer Professional Development Ribbon
- Overseas Service Ribbon

12. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

13. 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.

14. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 17 June 1975 and reenlisted on 8 March 1978 and 23 December 1980.
- The applicant's official military record is void of the facts and circumstances leading to his notification of separation. On 4 August 1986, the applicant's commander notified the applicant of intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200, Chapter 14-12d, for abuse of illegal drugs. The commander noted the specific reason as the applicant's positive urinalysis test submitted on 27 May 1986.
- The administrative separation board found the applicant did commit an act of misconduct in his use of an illegal substance, to wit: cocaine and that he did abuse trust vested in him by using his position in the Alcohol and Drug Abuse Prevention and Control Program for his own personal gain.
- The applicant was discharged on 5 January 1987 and was credited with 11 years, 6 months, and 19 days of net active service.

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 asserts he was subjected to reprisal due to reporting misuse of government property and funds, and he indicated a mental health condition was associated with his discharge. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant is 70% service connected for Major Depressive Disorder since 2004. He initiated mental health treatment on 19 July 2004 and reported symptoms of depression and insomnia. Documentation discussed a history of hospitalization "for one week while stationed in Alaska" and having been prescribed medications (unable to recall names/type). He was diagnosed with Depression, not otherwise specified, and Insomnia. He was next seen on 13 June 2007 where he reported worsening depression, worries about his health conditions, and passive thoughts of suicide. He was prescribed a medication to reduce anxiety and improve sleep, which was not effective per documentation from one month follow up. Through January 2009 he was seen routinely for medication management with multiple medication changes and questionable adherence to treatment and psychotherapy, which focused primarily on adjustment to illness and anger/frustration. He discontinued therapy after his provider left the VA, but he continued with medication management and documentation showed continued medication adjustments as well as his frustration with the system due to lost records, which was impeding his claim process. From mid-2009 to 2011, he had intermittent follow up with mental health. Documentation from a psychotherapy intake on 9 May 2011 showed that the applicant

reported a history of a command directed evaluation that resulted in a week-long hospitalization when he was stationed in Alaska. He elaborated on the events leading up to this hospitalization and was diagnosed with Depression associated with a medical condition and Adjustment Disorder.

e. A Compensation and Pension (C&P) evaluation dated 9 August 2011, which was a review of his service-connected Major Depressive Disorder, showed that the applicant's condition had improved somewhat, but he continued to report excessive anger problems, which he did not feel he could control. Documentation indicated he had been unemployed since receiving SSDI benefits in 2007, and he preferred to remain at home where he helped with caring for children and household responsibilities. The evaluator noted, "Veteran's long term personality traits may contribute to interpersonal stress and inappropriate behaviors. No mental condition noted in records or displayed that would indicate a barrier to occupational functioning or sedentary occupational position." His diagnosis was Major Depressive Disorder, recurrent, of moderate severity and Personality Disorder, not otherwise specified.

f. Through 2016, the applicant intermittently engaged in medication treatment, and in 2019 it was noted he dropped out of treatment with notation that any medication needs could be prescribed by primary care. In December 2023, the applicant and his wife applied for assistance through the Caregiver Support Program. Documentation noted that the applicant was not currently receiving mental health services and was not taking medications. He expressed frustration with the VA system, and his wife reported she is unable to work due to concerns for his mental health. She reported he made a suicide attempt "about five years ago," but no documentation in VA records was found. The applicant was denied this assistance.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a mental health condition or experience that mitigates his misconduct. The complete facts and circumstances leading to his separation are limited, but his DD214 showed he was separated due to misconduct related to abuse of illegal drugs. The applicant's statement provides corroboration that his separation was related to a positive drug test. A review of his VA medical records documents his report of a hospitalization due to mental health problems while stationed in Alaska, but the applicant did not attribute his misconduct to this event. Additionally, there are no records available substantiating the hospitalization. Overall, the applicant's statements primarily attribute his discharge related to abuse of illegal drugs to retaliation and interpersonal conflict.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition at the time of

the misconduct. There were no records from his time in service that documented a mental health condition, but the applicant is diagnosed with Major Depressive Disorder by the VA starting in 2004.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He reported to his VA providers a history of a command directed evaluation and hospitalization while he was stationed in Alaska.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant has been diagnosed with Major Depressive Disorder and is service connected through the VA for this condition. While substance abuse can be a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure and can be a natural sequela to some mental health conditions associated with exposure to traumatic and stressful events, the applicant does not report a history of trauma exposure neither in his application nor in his VA records. There is insufficient evidence of a mental health condition that mitigates his misconduct.

i. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered 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. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

3. A majority of the Board noted the applicant had no record of misconduct other than a positive urinalysis. Considering the facts in this case and the statement the applicant provided in support of his application, a majority of the Board found relief is warranted.

Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.

4. The member in the minority 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 member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

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 his DD Form 214 to show his character of service as honorable.

3/29/2025

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, U.S. 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.
3. 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. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for 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.



4. 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.

5. 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 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//