

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20240001064

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in item 28 (Narrative Reason for Separation), a more favorable reason than "unsuitability."

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Statement
- 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 states as a young African American Soldier serving his country to the best of his ability at the time, he does not believe he did anything that warranted the unsuitability discharge. There were circumstances surrounding this narrative reason for discharge that were not warranted or proven. He believes he was targeted and treated unjustly. He was exposed to Agent Orange, and other emotional trauma during his tour, and he was never provided counseling or treatment. As a young man he did not have the means to defend the accusations, and decisions that were made concerning his Army career. He also annotated his application to the Board to show he suffers from posttraumatic stress disorder (PTSD), and traumatic brain injury (TBI).
3. Additionally, he provided a statement in support of his request indicating he worked hard and received the Sharpshooter Marksmanship Qualification Badge and National Defense Service Medal. He also received a higher rank, and it was taken away. He served at a Medical Depot and witnessed the horrors of Soldiers coming back from the front line. Those Soldiers had been exposed to and ravaged by the horrors of war. They had also been exposed to multiple chemicals such as Agent Orange, and he slept in the same room and barracks with those Soldiers.

a. He was traumatized by what he saw. Like many other young Soldiers, he drank alcohol to medicate for his fears and emotions. He did so because he was not offered any form of support or therapy to manage his trauma. There were accusations made that he was using drugs, but he was not using drugs, and there was never any proof of that accusation. He knows that many returning Soldiers had been introduced to heroin during their tours. Nonetheless he was relieved of his duties.

b. After returning home, he was treated at the Veterans Hospital in Detroit, MI, for problems with his legs, due to being exposed to Agent Orange. He also received a very small amount of compensation for having been exposed to Agent Orange.

c. He has not allowed his military experience to completely hinder his success. Even though, he continued to struggle with depression and other health concerns. He worked for Ford Motor Company for 35 years and retired. He has continued to work, since retirement, until recently, when he was diagnosed with prostate cancer, which he was told is most likely a direct result of some of the chemical exposure. He also suffers from congestive heart failure.

d. He does not believe that he was [properly] allowed to defend himself against the accusations that were made [against him]. He believes he could have had a great Army career. He is requesting that his DD Form 214 be corrected to show a narrative reason for separation other than unsuitability.

4. At age 20, on 21 June 1972, he was inducted into the Army of the United States. He was awarded military occupational specialty (MOS) 94B (Cook). On 22 November 1972, he was assigned to Germany with duties in his MOS.

5. The applicant received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on:

- 2 December 1972, for two specifications of assault
- 9 May 1973, for absenting himself from his place of duty and assault

6. On 25 May 1973, he was arrested by military police for driving while drunk and for possessing an illegal weapon (a razor).

7. On 29 May 1973, the applicant was mandatorily referred to the Kaiserslautern Community Drug and Alcohol Assistance Center [later, better known as the Alcohol and Drug Abuse Prevention and Control Program], due to driving while drunk, on 25 May 1973. The Disposition of this treatment is not in the available evidence. Due to this offense his driving privileges appear to have been revoked.

8. On 9 July 1973, he was convicted by a special court-martial of assault, violating a general regulation, and disorderly conduct. The court sentenced him to hard labor without confinement for 30 days, a forfeiture of \$100 pay for 1 month, and reduction from private/E-2 to private/E-1. This is the only reduction in rank in the available evidence.

9. On 10 July 1973, he again received NJP under the provisions of Article 15, UCMJ, for disobeying a lawful order by locking his door from the inside between 0600 hours and 2300 hours on 10 July 1973. His punishment consisted of an oral reprimand, and a forfeiture of \$70 pay (suspended for 30 days).

10. On 28 August 1973, he underwent a mental status evaluation, and he was found qualified for separation.

11. A Statement of Counseling, dated 29 August 1973, shows the applicant was counseled by Lieutenant Colonel WJS who stated the applicant was an excellent worker and he did an outstanding job as a cook in the unit mess. But his conduct was unsatisfactory. The applicant was counseled between 22 May and 10 July 1973, for his conduct on the following dates:

- 22 May 1973, concerning an improper turn in his privately owned vehicle (POV) on 2 May 1973, and he was cited by police
- 31 May 1973, in reference to improper conduct in his POV
- 26 May 1973, concerning his improper conduct with military police
- 2 December 1972, for fighting a specialist four/E-4
- 23 August 1973, for attempting to start a fight with a private first class/E-3
- 9 May 1973, for being absent without leave
- 10 July 1973, for willfully disobeying an order

12. On 29 August 1973, he underwent a mental status evaluation, and he was determined to have no significant mental illness, he was mentally responsible, able to distinguish right from wrong, he had the ability to adhere to the right, he had the mental capacity to understand and participate in proceedings determined to be appropriate by his chain of command. He also met retention standards prescribed in chapter 3, Army Regulation (AR) 40-501 (Standards of Medical Fitness).

13. On 20 September 1973, the unit commander-initiated action to separate the applicant under the provisions of AR 635-200 (Personnel Separations), paragraph 13-5b(3) for unsuitability - apathy, defective attitude, or inability to expend effort constructively.

14. On 20 September 1973, the applicant consulted with counsel, waived consideration of his case by a board of officers, waived a personal appearance before a board of

officers, and elected not to submit a statement in his own behalf. He also acknowledged that he understood he might expect to encounter substantial prejudice in civilian life in the event a discharge under conditions other than honorable was issued to him. He also waived a further psychiatric examination in connection with this action.

15. On 25 September 1973, the separation authority approved the recommendation for separation under the provisions of AR 635-200, paragraph 13-5b(3) for unsuitability with the issuance of a general discharge. Special Orders 275, dated 2 October 1973, confirms he was to be assigned separation program number (SPN) 264 (Unsuitability).

16. Accordingly, on 2 October 1973, he was discharged. The DD Form 214 he was issued at the time shows he was discharged under the provisions of AR 635-200, paragraph 13-5b(2) [in effect paragraph 13-5b(3)] with a general characterization of service. He was assigned SPN 264, due to unsuitability. He completed 1 year, 3 months, and 12 days of total active service.

17. The available medical evidence does not show he was diagnosed with a character and behavior disorder by a psychiatrist, or that he was diagnosed with Agent Orange, PTSD, or TBI. He did not serve in Vietnam, he served in Germany.

18. On 29 May 2012, the ABCMR reviewed the applicant's case and determined the regulation was changed following settlement of a civil suit. In view of the change, the general discharge issued to the applicant at the time of separation was inconsistent with the standards for discharge by reason of unsuitability, character and behavior disorder (now known as a personality disorder) which subsequently became effective. Since these new standards retroactively authorized an honorable discharge in cases where Soldiers diagnosed with a personality disorder were separated for unsuitability, the applicant in this case should receive an honorable discharge consistent with these standards.

19. On 8 August 2012, the applicant's previously issued DD Form 214 was voided, and he was issued a new DD Form 214 showing he completed 1 year, 3 months, and 12 days of total active service. It also shows in:

- item 24 (Character of Service), Honorable
- item 25 (Separation Authority), "AR 635-200, Paragraph 13-5B2"
- item 26 (Separation Code), "264"
- item 27 (Reentry Code), "3"
- item 28 (Narrative Reason for Separation), "Unsuitability"

20. At the time of the applicant's discharge, "unsuitability," was the appropriate reason assigned to Soldiers separated under the provisions of AR 635-200, paragraph

13-5b(3). Discharge action was clearly initiated against the applicant under the provisions of AR 6035-200, Paragraph 13-5b(3), due to unsuitability- apathy, defective attitude, or inability to expend effort constructively.

21. AR 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time Set forth the basic authority for separation of enlisted personnel for unfitness or unsuitability.

a. Paragraph 13-5b(2), provided for discharge due to unsuitability and behavior disorders.

b. Paragraph 13-5b(3), provided for discharge due to unsuitability- apathy, defective attitude, or inability to expend effort constructively.

c. When separation for unsuitability was warranted, an honorable or general discharge was issued as appropriate by the member's military record.

22. The above regulation was revised on 1 December 1976, following settlement of a civil suit. Thereafter, the type of discharge and the character of service was to be determined solely by the individual's military record during the current enlistment. Further, any separation for unsuitability based on personality disorder must include a diagnosis of a personality disorder made by a physician trained in psychiatry. In connection with these changes, a Department of the Army Memorandum dated 14 January 1977, and better known as the Brotzman Memorandum, was promulgated. It required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

23. A second memorandum, dated 8 February 1978, and better known as the Nelson Memorandum, expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable except in cases where there are "clear and demonstrable reasons" why a fully honorable discharge should not be given. Conviction by general court-martial or by more than one special court-martial was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

24. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending on 2 October 1973 to show in item 28 (Narrative Reason for Separation), a more favorable reason than "unsuitability."

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 was inducted into the Army of the United States on 21 June 1972.
- Applicant received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on:
 - 2 December 1972, for two specifications of assault
 - 9 May 1973, for absenting himself from his place of duty and assault
 - On 25 May 1973, he was arrested by military police for driving while drunk and for possessing an illegal weapon (a razor).
- On 29 May 1973, the applicant was mandatorily referred to the Kaiserslautern Community Drug and Alcohol Assistance Center [Alcohol and Drug Abuse Prevention and Control Program], due to driving while drunk, on 25 May 1973. The Disposition of this treatment is not in the available evidence. Due to this offense his driving privileges appear to have been revoked.
- On 9 July 1973, he was convicted by a special court-martial of assault, violating a general regulation, and disorderly conduct. The court sentenced him to hard labor without confinement for 30 days, a forfeiture of \$100 pay for 1 month, and reduction from private/E-2 to private/E-1.
- Statement of Counseling, dated 29 August 1973, shows the applicant was counseled by Lieutenant Colonel WJS who stated the applicant was an excellent worker and he did an outstanding job as a cook in the unit mess. But his conduct was unsatisfactory. The applicant was counseled between 22 May and 10 July 1973, for his conduct on the following dates:
 - 22 May 1973, concerning an improper turn in his privately owned vehicle (POV) on 2 May 1973, he was cited by police
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 - 2 December 1972, for fighting a specialist four/E-4
 - 23 August 1973, for attempting to start a fight with a private first class/E-3
 - 9 May 1973, for being absent without leave
 - 10 July 1973, for willfully disobeying an order
- On 20 September 1973, the unit commander initiated action to separate the applicant under the provisions of AR 635-200 (Personnel Separations), paragraph 13-5b (3) for unsuitability - apathy, defective attitude, or inability to expend effort constructively.
- On 25 September 1973, the separation authority approved the recommendation for separation under the provisions of AR 635-200, paragraph 13-5b(3) for unsuitability with the issuance of a general discharge. Special Orders 275, dated 2 October 1973, confirms he was to be assigned separation program number (SPN) 264 (Unsuitability).

- Accordingly, on 2 October 1973, he was discharged. The DD Form 214 he was issued at the time shows he was discharged under the provisions of AR 635-200, paragraph 13-5b(2) [in effect paragraph 13-5b(3)] with a general characterization of service. He was assigned SPN 264, due to unsuitability. He completed 1 year, 3 months, and 12 days of total active service.
- On 29 May 2012, the ABCMR reviewed the applicant's case and determined the regulation was changed following settlement of a civil suit. In view of the change, the general discharge issued to the applicant at the time of separation was inconsistent with the standards for discharge by reason of unsuitability, character and behavior disorder (now known as a personality disorder) which subsequently became effective. Since these new standards retroactively authorized an honorable discharge in cases where Soldiers diagnosed with a personality disorder were separated for unsuitability, the applicant in this case should receive an honorable discharge consistent with these standards.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states as a young African American Soldier serving his country to the best of his ability at the time, he does not believe he did anything that warranted the unsuitability discharge. There were circumstances surrounding this narrative reason for discharge that were not warranted or proven. He believes he was targeted and treated unjustly. He was exposed to Agent Orange, and other emotional trauma during his tour, and he was never provided counseling or treatment. As a young man he did not have the means to defend the accusations, and decisions that were made concerning his Army career. He also selected on his application posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI) as related to his request.

d. Due to the period of service no active-duty electronic medical records were available for review. On 29 August 1973, he underwent a mental status evaluation, and he was determined to have no significant mental illness, he was mentally responsible, able to distinguish right from wrong, he had the ability to adhere to the right, he had the mental capacity to understand and participate in proceedings determined to be appropriate by his chain of command. He also met retention standards prescribed in chapter 3, Army Regulation (AR) 40-501 (Standards of Medical Fitness). Contrary to the applicant's statement, the available medical evidence does not show he was diagnosed with a character, personality, or behavioral condition/disorder by a psychiatrist, or that he was diagnosed with Agent Orange exposure, PTSD, or TBI. In addition, the applicant did not serve in Vietnam, he served in Germany.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 10% service connected for tinnitus, there is no service connection for any BH condition. The VA electronic record available for review indicates the applicant initially sought behavioral health services on 26 August 2024, during an intake appointment the

clinician opined the applicant's "presentation and history are not suggestive of a PTSD diagnosis". On 29 August 2024, the applicant and his wife contacted the VA to complain about the clinician who assessed him, since the applicant was not diagnosed with PTSD. The applicant was connected to another provider, however, the initial note dated 23 September 2024 does not show any diagnosis.

f. 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.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and TBI on his application.

(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. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The VA electronic record shows no indication he has been treated for either PTSD or TBI and the applicant did not provide any medical documentation substantiating any BH diagnosis. Regardless of diagnosis or adverse experience, the applicant's misconduct of engaging in physical assault would not be mitigated by any of his asserted conditions. There is no nexus or natural sequelae between the asserted conditions and physical assault. Specifically, these conditions/circumstances do not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

h. Per Liberal Consideration, the applicant's assertion of PTSD and TBI is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 conduct and the reason for separation. The applicant was separated for unsuitability. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigated his conduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

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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. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. SPD Codes were previously called SPN codes. The SPN of 246 was the appropriate code to assign Soldiers separated under the provisions of AR 635-200, paragraph 13-5b(3), due to unsuitability.
3. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time set forth the basic authority for separation of enlisted personnel for unfitness or unsuitability.
 - a. Paragraph 13-5b(2), provided for discharge due to unsuitability due to character and behavior disorders.
 - b. Paragraph 13-5b(3), provided for discharge due to unsuitability- apathy, defective attitude, or inability to expend effort constructively.
 - c. When separation for unsuitability was warranted, an honorable or general discharge was issued as appropriate by the member's military record.
4. The above regulation was revised on 1 December 1976, following settlement of a civil suit. Thereafter, the type of discharge and the character of service was to be determined solely by the individual's military record during the current enlistment. Further, any separation for unsuitability based on personality disorder must include a diagnosis of a personality disorder made by a physician trained in psychiatry. In connection with these changes, a Department of the Army Memorandum dated 14 January 1977, and better known as the Brotzman Memorandum, was promulgated. It required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.
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more than one special court-martial was determined to be "clear and demonstrable reasons" which would justify a less than fully honorable discharge.

//NOTHING FOLLOWS//