

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240001185

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record), 15 November 2023
- Department of Veterans Administration (VA) Signature Verification
- National Personnel Records Center (NPRC) Letter, 31 May 2021
- Standard Form (SF) 180 (Request Pertaining to Military Records)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he did not expect to be discharged. He expected to make the military a career. During basic training one of the sergeants told him he should consider the Army because they need Soldiers like him. He has appealed to the Veterans for Foreign Wars for help with his upgrade.
3. The applicant provides:
  - a. A VA signature verification document dated 28 May 2020 which indicates the information he has provided is true and correct, to the best of his knowledge.
  - b. A letter from NPRC dated 31 May 2021, notifying the applicant they provided the service record documents he requested pertaining to his separation.
  - c. An SF 180 wherein the applicant requests a copy of his service record for the purpose of obtaining benefits and the VA loan program.

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

a. On 30 August 1961, in connection with an enlistment, he underwent a medical examination, and he gave a report of medical history. He presented in good health and other than the usual childhood diseases, he noted no major mental or physical disqualifications.

b. On 31 August 1961, he enlisted in the Regular Army for a period of 3 years. He was subsequently awarded military occupational specialty 716.10 (Personnel Administrative Specialist) and he was assigned to 501st Administrative Company, Fort Hood.

c. An SF 600 (Chronological Record of Medical Care), 3 March 1962, reflects he requested to see a doctor about a personal problem. He was extremely agitated and crying as the result of his father's death in Korea in 1951. He reported recurrent dreams of his father's death.

d. An SF 502 (Narrative Summary), dated 26 March 1962, reflects he was admitted to the hospital from 20 March 1962 to 26 March 1962 as the result of his fear of suicide. The narrative notes:

(1) He was seen at Mental Hygiene Consultation Services (MHCS), U.S. Army Hospital, Fort Hood on 7 March 1962 on referral from his unit dispensary. He had terrible dreams of his father being all shot up, he could not stand the sound of guns and he was afraid of all weapons; he became paralyzed during basic training, even though he knew he would not be shot.

(2) The examiner noted he was histrionic, excitable, clean-cut, and talked of his upsetness about guns. After his referral to MHCS, his commanding officer wanted to continue to work with him and the case was closed with a diagnosis of emotional instability reaction.

(3) The examiner diagnosed emotional instability reaction, chronic, marked, manifested by intense dislike of authority, ineffectiveness under stress, histrionic manipulation, ideas of reference, poor masculine identification, and marked emotional immaturity.

(4) He was discharged to duty pending administrative separation from service.

e. A Mental Hygiene Consultation Service Certificate report of psychiatric evaluation, dated 27 March 1962, reflects the Chief Psychiatrist, MHCS, U.S. Army Medical Hospital:

(1) Diagnosed emotional instability reaction, chronic, marked, manifested by intense dislike of authority, ineffectiveness under stress, histrionic manipulation, ideas of reference, poor masculine identification, and marked emotional immaturity; disqualifying.

(2) There were no mental or physical defects sufficient to warrant discharge under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

(3) He was and is mentally responsible; able to distinguish right from wrong, adhere to the right, and to cooperate in his own defense if such is necessary. There was no psychiatric contra-indication to, any administrative action deemed appropriate.

(4) The examiner recommended: This condition was not amenable to hospitalization, treatment, disciplinary action, training, transfer, or change of duty. No further attempt at rehabilitation of the Soldier should be made. It was recommended that he be separated from the military service under the provisions of Army Regulation 635-209 (Discharge Unsuitability).

f. On 29 March 1962, he was counseled by his Commanding Officer, 501st Administration Company, 1st Armored Division, and notified that he was recommending his discharge from the Army under the provisions of Army Regulation 635-209 for unsuitability. His commander notified him of his rights, and he notified him a General Discharge Certificate may be issued to him. He understood he was entitled to a hearing before a board of officers; entitled to submit written statements in his own behalf; and entitled to waive both of these rights. Military counsel would be made available to him, or he may elect civilian counsel at his own expense. In electing his rights, he waived military counsel; he elected not to submit statements in his own behalf; and he waived a hearing before a board of officers.

g. On 2 April 1962, his commanding officer recommended his discharge under the provisions of Army Regulation 635-209 for unsuitability because of a Mental Hygiene Report as well as what he had been able to do in his unit. He demonstrated a severe personality disorder and because of this he was unable to perform his assigned duties in an acceptable manner. Due to the personality disorder, it was felt that disciplinary action would not be of any avail. His commander noted no record of disciplinary actions taken against him since his entry into the service, and there were no records of trials by court-martial.

h. On 6 April 1962, the separation authority approved his discharge because of unsuitability and directed a General Discharge Certificate.

i. On 12 April 1962, he underwent a final medical examination and the physician noted he was qualified for separation.

j. On 19 April 1962, he was discharged. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under provisions of Army Regulation 635-209, with a characterization of service of under honorable conditions (General), and a separation program number (SPN) 264. He completed 7 months and 19 days. He was awarded Marksman Marksmanship Qualification Badge with Rifle Bar.

4. A Department of the Army memorandum, dated 14 January 1977, subject: Review of Unsuitability Discharge by Reason of Personality Disorder, signed by Donald G. Brotzman, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed retroactive application of the 18 January 1977 changes to AR 635-200 concerning applications for upgrades of discharges issued by reason of personality disorders.

5. A Department of the Army memorandum, dated 8 February 1978, subject: Litigation Involving the Army's System for Discharging Individual with Personality Disorders, signed by Robert L. Nelson, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed that that all applicant's for relief for a less than honorable discharge as a result of personality disorder who were not diagnosed by a medical doctor trained in psychiatry, shall be entitled to have their discharges upgraded to honorable. Further, in reviewing such applications for relief, the presence of a personality disorder diagnosis should be considered as a mitigating factor that justifies relief except in cases where there are clear and demonstrable why a fully honorable discharged should not be given. However, 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.

6. A Department of the Army memorandum, 15 January 1980, subject: Discharges for Unsuitability Due to Personality Disorders, signed by E. E. Wilmeth, Chief, Examining Branch, directed that eligible applicants may qualify for upgrading of their administrative discharge if:

- a. They were not diagnosed by a medical doctor properly trained in psychiatry; or
- b. They were issued a general discharge on the basis of their personality disorder diagnosis, rather than their service record; or
- c. The Board considers the presence of a personality disorder diagnosis as a mitigating factor that justifies relief, and there are no clear and demonstrable reasons why a fully honorable discharge shall not be given.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general under honorable conditions discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 31 August 1961; 2) The applicant was discharged on 19 April 1962, under provisions of Army Regulation 635-209, with a character of service of Under Honorable Conditions (General), and a separation program number (SPN) 264. He completed 7 months and 19 days with no time lost, and he held a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

c. The applicant underwent a medical exam prior to his enlistment, and he gave a report of no major mental or physical concerns, which would disqualify him for service. However less than a year afterwards, the applicant was reporting to medical personnel with mental health concerns related to his father's death 10 years prior. On 20 March 1962, the applicant was admitted to the hospital for suicidal ideation, and he was evaluated by Mental Hygiene Consultation Services (MHCS). Previously to this admission, the applicant was being seen at MHCS starting on 07 March 1962. The applicant was reporting distressing dreams, did not like the sound of guns, and was afraid of all weapons. He also had an unrealistic fear of being shot. The applicant's commanding officer wanted to continue to work with him, and he was released from the hospital and returned to duty with the diagnosis of instability reaction. Later on 27 March 1962, the applicant was evaluated by the Chief Psychiatrist at MHCS, and he was diagnosed with an emotional instability reaction, not a personality disorder. However, the psychiatrist noted his condition was not amenable to hospitalization, treatment, disciplinary action, training, transfer, or change of duty. It was recommended that he be separated from the military service for unsuitability. On 2 April 1962, his commanding officer recommended his discharge for unsuitability because of a Mental Hygiene Report. The applicant was report as demonstrating a severe personality disorder and because of this, he was unable to perform his assigned duties in an acceptable manner. His commander noted no record of disciplinary actions taken against him since his entry into the service, and there were no records of trials by court-martial.

d. A review of JLV provided evidence the applicant passed away on 07 December 2023, and JLV was void of medical documentation pertaining to the applicant.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant was likely experiencing difficulty adjusting to the military, and he was diagnosed by a psychiatrist with an emotional instability reaction, not a personality disorder. However, the applicant was counseled as experiencing a personality disorder, and he had no history of misconduct during his active service. Therefore, there is evidence that his discharge meets criteria to be upgraded to an honorable.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant was likely experiencing difficulty adjusting to the military, and he was diagnosed by a psychiatrist with an emotional instability reaction, not a personality disorder. However, the applicant was counseled as experiencing a personality disorder, and he had no history of misconduct during his active service. Therefore, there is evidence that his discharge meets criteria to be upgraded to an honorable.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

#### 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 misconduct and the reason for separation. The applicant was separated for unsuitability with the commander citing a severe personality disorder and because of this has been on sick call many times. 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 the medical advisor's review finding evidence to support his discharge meets the criteria for an upgrade. However, the Board was not convinced by the medical advisor's review or the applicant's contention. 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 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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

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

c. Paragraph 13-5b(2) provided an individual was subject to separation under the provision of this chapter for unsuitability for character and behavior disorders as determined by medical authority, character and behavior disorders and disorders of intelligence as suggested by various symptoms as enuresis or somnambulism; when such disorders are chronic and recalcitrant to attempts at rehabilitation and interfere with the serviceman's ability to adequately perform his duties. A General Discharge Certificate was normally directed under this paragraph.

3. Army Regulation 635-209 (Discharge Unsuitability), in effect from 17 March 1955 to 14 July 1966, prescribed policies and procedures for the separation of Soldiers who were considered unsuitable for continue military service.

a. A Soldier was separated under this provision when it was clearly established the Soldier was unlikely to develop sufficiently to participate in further military training/become a satisfactory Soldier or had a psychiatric or physical condition that did not warrant a discharge for physical disability.

b. Separation due to character and behavior disorders pertained to Soldiers with character and behavior disorders, disorders of intelligence, and transient personality disorders due to acute or special stress as defined in Special Regulation 40-1025-2



(Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions – 1949).

c. A Soldier who was discharged for unsuitability was to be given either an honorable or a general characterization of service, as warranted by the Soldier's records. Such discharge was to be effected when it had been determined an individual was unsuitable for further military service because of inaptitude. This applied to individuals who were best described as inapt, due to lack of general adaptability, want of readiness or skill, un-handiness, or inability to learn.

4. Special Regulation 40-1025-2 (Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions), 1949, defined character and behavior disorders as those indicative of developmental defects or pathological trends in the personality structure, with minimal subjective anxiety, and little or no sense of distress. It stated further that, in most instances, the disorder was manifested by a lifelong pattern of action or behavior ("acting out") rather than by mental or emotional symptoms. The associated categories were:

- pathological personality types – maladjustment of individuals as evidenced by lifelong abnormal behavior patterns
- immaturity reactions – physically adult individuals who are unable to maintain their emotional equilibrium and independence when under minor or major stress
- alcoholism – character disturbance due to alcohol abuse
- addiction – includes cases where the use of drugs represent much deeper character disturbances where individuals engage in antisocial behavior, stealing, or sexual assault while under the influence of drugs
- primary childhood behavior reactions – serious emotional difficulties within the child that are not due to organic defects where emotional displays are carried to an extreme degree

5. Army Regulation 635-212 (Personnel Separations, Discharge, Unfitness and Unsuitability), in effect from 15 July 1966 to 23 November 1972, set forth the policy and procedures for the administrative separation of enlisted personnel for unfitness and unsuitability. It provided for the discharge due to unsuitability of those individuals with character and behavior disorders and disorders of intelligence as determined by proper medical authority. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

6. Army Regulation 635-200 (Personnel Separations, Enlisted Personnel), change 39, dated 23 November 1972, effective 15 January 1973, superseded Army Regulation 635-212 with Army Regulation 635-200, Chapter 13 (Separation for Unfitness and Unsuitability). Interim Change to Army Regulation 635-200, dated

18 January 1977, effective 22 February 1977, which made changes to chapters 1 and 13, stated that an enlisted Soldier's type of discharge and the character of service were to be determined solely by the individual's military record during the current enlistment. Further, any separation for unsuitability based on a personality disorder must include a diagnosis of a personality disorder made by a physician trained in psychiatry and psychiatric diagnosis, and consistent with the description in the Diagnostic and Statistical Manual of Mental Disorders which describes the condition as deeply ingrained, maladaptive pattern of behavior of long duration which interferes with the members' ability to perform duty.

7. A Department of the Army memorandum, dated 14 January 1977, subject: Review of Unsuitability Discharge by Reason of Personality Disorder, signed by Donald G. Brotzman, Assistant Secretary of the Army (Manpower and Reserve Affairs), directed retroactive application of the 18 January 1977 changes to Army Regulation 635-200 concerning applications for upgrades of discharges issued by reason of personality disorders.

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- c. The Board considers the presence of a personality disorder diagnosis as a mitigating factor that justifies relief, and there are no clear and demonstrable reasons why a fully honorable discharge shall not be given.

10. 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 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.

11. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

12. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to 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, 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.

13. 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//