

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240001228

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to general, under honorable conditions

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Four Character References Letters
- Honorable Discharge Certificate
- General Education Diploma (GED)
- Certificate of Promotion
- Jungle Operations Training Center Certificate
- Marriage License
- Veteran Affairs (VA) Medical information
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he would like an upgrade of his military discharge. He enlisted into the U.S. Army at the age of 17, 6 December 1978. His military occupational specialty (MOS) was Infantryman (11B). He was assigned to Germany, 3rd Armored Division. After being in service approximately 18 months, his father died, July 1980. This was very traumatic for him. He continued his duties as a Soldier. November 1982 he was transferred stateside. His mother subsequently passed in March 1983. His production as a Soldier declined, he was not offered, therapy or counseling. He made a lot of poor decisions behind the traumatic experience of both parents passing within three years of each other. His poor decisions included drugs and alcohol, which led him to go absent without leave (AWOL) and eventually, a bad discharge. He did get a couple of promotions beforehand, as well as a few Article 15s because of his mental

state. His goal was to make a career in the Army. His father served at Pearl Harbor and his brother served during Vietnam era, he attempted to follow in their footsteps. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 149 as a condition related to his request.

3. The applicant provides the following documents:

a. Four character letters describe the applicant's high moral character, his work ethic, dependability, loyalty, and dedication among his family, friends, church community and co-works.

- Ms. [REDACTED] 1 June 2023 – daughter
- Mr. [REDACTED] 23 July 2023
- Pastor [REDACTED] 1 July 2023
- Mr. [REDACTED] neighbor

b. A copy of his GED shows he satisfied his general educational requirements approved by [REDACTED] Board of Education.

c. A copy of his Certificate of Promotion to sergeant dated 4 March 1982.

d. A copy of his Jungle Operations Training Center Certificate shows his successful completion on 28 January 1983.

e. A copy of his Marriage License shows he was legally married to Ms. [REDACTED] on [REDACTED]

f. A copy of his VA medical progress notes for treatment received between on or about 30 October 2023 and 1 May 2024.

g. A copy of his DD Form 214 with corresponding Honorable Discharge Certificate, to be referenced in the service record.

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

a. He enlisted in the Regular Army on 5 December 1978.

b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 21 August 1979 to 3 November 1982. It also shows the applicant was AWOL from 23 July 1984 until 13 November 1984.

c. On 19 November 1984, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of being absent without leave (AWOL) from on or about 23 July 1984 until on or about 14 November 1984.

d. On 20 November 1984, after consulting with legal counsel, he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration
- may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life

e. On 4 December 1984, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted pay grade.

f. On 27 December 1984, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 5 years 9 months and 2 days of active service with 114 days of lost time. The narrative reason for separation is listed as "For the Good of Service-In Lieu of Court-Martial." It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Good Conduct Medal
- Noncommissioned Officer Professional Development Ribbon

5. On 21 January 1987, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he experienced an undiagnosed mental health condition, including PTSD, 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 5 December 1978.
- The applicant had court-martial charges preferred against him for one specification of being absent without leave (AWOL) from 23 July 1984 until 14 November 1984, and he requested a discharge for the good of the service.
- The applicant was discharged on 27 December 1984 and completed 5 years 9 months and 2 days of active service with 114 days of lost time.

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 the deaths of his parents in 1980 and 1983 was traumatic for him, and he turned to drugs and alcohol to cope. He eventually went AWOL and received a bad discharge. The application included VA progress notes from February to May 2024, and these will be addressed in the summary below. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was reviewed and showed that in May 1995 the applicant engaged in a VA residential treatment program for poly-substance dependence and homelessness. He successfully completed the program on 27 October 1995 and was discharged. His next encounter with VA for mental health treatment was on 20 April 2022, and he reported grief and loss over the death of his parents, which he questioned as the precipitating factor in his poly-substance abuse. He reported being "clean and sober"

since November 2020. He attended a weekly grief group led by a VA chaplain and had a follow up visit with a psychologist in November 2022. He reported symptoms of anxiety and depression and was diagnosed with Depressive Disorder, unspecified. In subsequent psychotherapy sessions, he discussed nightmares related to witnessing a fellow soldier jumping off a four-story building (and being a first responder) and his anger toward the military for not providing him with mental health support. He was seen for a medication evaluation on 22 March 2023 and was started on an antidepressant medication and a medication to help with nightmares. His diagnosis was changed to Trauma and Stress Related Disorder, and with the resolution of nightmares secondary to the medication, the focus of therapy shifted to managing daily stressors, including financial concerns, employment problems, and being the caregiver to his wife. Eventually individual therapy was terminated, and he was referred to a Coping and Stress Management group and continued in the grief group. At a follow up with his psychiatrist on 1 February 2024, he reported continued ruminating on traumatic events that occurred while he was in the military (i.e. friend jumping from the building; seeing a soldier die after a tanker rolled over him; witnessing live round exploding and injuring a soldier). He endorsed increased nightmares and sleep difficulty, and his medication was increased. The applicant was referred again to individual therapy where he primarily addressed difficulties in his role as caregiver. Per his psychologist, his diagnosis was changed to Adjustment Disorder with depression, and he was referred to another stress management-related group. His most recent contact was on 5 September 2024, and he reported increase anxiety associated with purchasing a house. Of note, his psychiatrist's diagnoses are PTSD, Major Depressive Disorder, Nightmare Disorder, and Insomnia, unspecified, but documentation does not reflect the full criteria for each of these diagnoses.

e. 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 while on active service. There is evidence of a history of poly-substance abuse and mental health treatment through the VA, but the number of years between his misconduct and his initial treatment makes it difficult to fully support a nexus. It is this Advisor's opinion that the reported trauma exposure while on active duty partially mitigates his misconduct of being AWOL for four months.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is no in-service documentation of mental health symptoms or diagnoses, but the applicant has received mental health treatment through the VA and has endorsed symptoms of depression, anxiety, and nightmares.

(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.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, VA documentation from 1995 showed that the applicant was treated for poly-substance dependence, and mental health documentation starting in 2022 provided evidence of treatment for depression and nightmares. In addition to the unexpected deaths of his parents, the applicant also reported witnessing three traumatic events while on active service. Avoidant behavior, such as going AWOL and substance abuse, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant found the letters of support provided by the applicant insufficient to support clemency. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being only partially mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

3/4/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted an administrative entry in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entries "Continuous honorable active service from 19781205 to 19810611//Member has completed first full term of service."

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

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

c. Chapter 10 of the regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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//