

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240001568

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 5 February 2024
- Self-Authored Statement
- Congressional Privacy Act Release Form, 9 September 2023
- DD Form 149, 2014
- 100 pages of service records
- Immunization Health Record, 1975 to 1978
- General Surgery Report, 1 June 1976
- History of Illness, 1976, semi-legible
- Physical Examination, June 1976
- Chapter 14 Medical Examination and Medical History, 11 July 1978
- letters, Veterans Administration, 7 June 1978 and 17 September 1979
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20130020811, 4 August 2014

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130020811 on 4 August 2014.

2. The applicant annotated on his DD Form 149 application that Post-Traumatic Stress Disorder (PTSD) and Other Mental Health conditions or issues were related to his request. He states:

a. He was considered an excellent Soldier by his peers and chain of command prior to his accident on 1 June 1976. He was a passenger on a 5-ton wrecker and was hospitalized for 1 week. He had multiple episodes of memory loss in the years following this incident.

b. He had multiple nonjudicial punishments as the result of his memory loss from his injury. He requested treatment but instead he received nonjudicial punishment. He believes if he had not been injured, he would not have been diagnosed with PTSD and traumatic-brain injury (TBI). His chain of command did not inform him of the consequences of his discharge at the time and it did not take into consideration his conditions.

c. In 2004, he requested Army Personnel Center review his application for his discharge to be upgraded. He was not afforded due process or legal advice to exercise his constitutional rights.

d. He requested documents from the National Archives, and these can attest to his conditions.

e. He is seeking an upgrade so he can get treatment for his condition which continues to worsen.

3. The applicant provides:

a. Service records consisting of 100 pages, which include separation processing documents and miscellaneous service records.

b. A medical record with a date of disposition of 1 June 1976, showing "the patient allegedly sustained injury when the wrecker he was traveling in went off the side of the road near Gate 20 on 27 May 1975 while on post and on duty." The diagnosis was mild brain contusion.

c. A physical examination dated 1 June 1976, noting, in part, a mild concussion.

d. Two VA letters, 7 June 1978 and 17 September 1979 denying him education and medical benefits by reason of the characterization of his discharge.

4. A review of the applicant's service records show the following:

a. On 29 October 1975, he enlisted in the Regular Army.

b. He accepted nonjudicial punishment on:

- 7 October 1976 for failing to go to his place of duty
- 27 June 1977 for failing to go to his place of duty
- 9 August 1977 for failing to go to his place of duty and he was reduced to private 2

- 22 August 1977 for failing to go to his place of duty at morning work formation, he was reduced to private
- 9 November 1977, for wearing an earring in his ear while in a military uniform
- 23 May 1978, for failing to go to his place of duty
- 7 June 1978, for failing to report to command muster formation, and the suspension of restriction of NJP he received on 23 May 1978 was vacated

c. On 15 June 1978, his commander notified him of his intent to recommend his separation under the provisions of Army Regulation 635-200, paragraph 14-33b for misconduct. He advised him of his rights which consisted of presenting his case before a board of officers, to submit statements in his own behalf, to request counsel, or to waive his rights. He understood his commander was recommending he receive an under other than honorable conditions characterization of service and that as a result of such a discharge, he would be deprived of many or all of his rights and benefits as a Veteran under both Federal and State law.

d. On 20 June 1978, his commander approved a bar to enlistment imposed against him.

e. On the same date, he elected his rights. He waived consideration of his case by a board of officers; he waived a personal appearance before a board of officers; he waived representation by counsel; and he indicated statements in his own behalf would be submitted. Such statement is not in the record or available for review.

f. On 11 July 1978, he underwent a medical examination and gave a report of medical history and noted excellent health and he was taking no medications. He did mark yes to a head injury on his report of medical history.

g. On 8 August 1978, the approval authority directed his discharge with an under other than honorable conditions characterization of service.

h. On 21 August 1978, he was discharged. His DD Form 214 (Report of Separation from Active Duty) reflects he was discharged under provisions of Army Regulation 635-200, paragraph 14-33b(1) with an under other than honorable conditions characterization of service. He completed 2 years, 9 months, and 23 days of active service.

5. On 31 July 2014, in ABCMR Docket Number Ar20130020811, the Board voted not to upgrade his discharge based upon insufficient evidence to support his contention.

6. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

7. Based on the applicant's condition(s)/contention(s) the Army Review Boards Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section. ARBA does not routinely provide copies of ARBA Medical Office Recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed PTSD and traumatic brain injury (TBI) 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 29 October 1975.
- The applicant accepted NJP between October 1976 and June 1978 for the following: failure to go to his place of duty (five incidents); wearing an earring in his ear while in a military uniform; failure to report to command muster formation.
- On 15 June 1978, his commander notified him of his intent to recommend his separation under the provisions of Army Regulation 635-200, paragraph 14-33b for misconduct.
- The applicant was discharged on 21 August 1978 and completed 2 years, 9 months, and 23 days of active service.

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 asserts he was involved in an accident on 1 June 1976, and this resulted in a week-long hospitalization and multiple episodes of memory loss, which contributed to his NJP and misconduct. He expressed that his chain of command was not supportive and did not inform him of the consequences of his discharge. He indicated PTSD and TBI as issues or conditions related to his request. A medical document dated 1 June 1976 showed notation that "patient allegedly sustained injury when the wrecker he was traveling in went off the side of the road near Gate 20, 27 May 76, approx..0900 hrs, on post, on duty" and "Brain Concussion, mild." A PULHES showed "3" for Physical Capacity/Stamina, which indicates duty limitations. A document titled "History of Present Illness" showed a presenting problem explanation that included "27 May 76 in the AM (illegible) a wrecker (illegible) He was unconscious for a few minutes. Hx/nasal bleeding (illegible)." A Veterans Administration letter dated 7 June 1978 showed that the applicant's education benefits were terminated, and he had a debt of \$82.93. A second letter dated 12 July 1978 showed further debt. A letter dated 17 September 1979 showed that the applicant was denied VA benefits, and another denial letter dated 1

March 1979 provided detailed information about the process for pursuing a change to his discharge. A Report of Medical History, authored by the applicant, dated 11 July 1978 showed he indicated head injury, and a Report of Medical Examination noted his present health a "excellent; no meds." A Report of Mental Status Evaluation on the same date showed the applicant did not have mental illness and was responsible, had mental capacity, and met retention standards. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service, but there was evidence of documentation of a head injury and mild concussion.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no DoD or VA medical or mental health records. A community health summary showed several physical health conditions, but there was no indication of diagnoses of PTSD or TBI.

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 condition or experience that fully mitigates his misconduct.

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, and a TBI at the time of the misconduct. Medical documentation from his time in service showed that the applicant was evaluated by a physician on 1 June 1976 and reported having experienced loss of consciousness "for a few minutes" as a result of an accident, which occurred on 27 May 1976. The provider noted "Brain Concussion, mild," and there was evidence of nasal bleeding. A Report of Mental Status Evaluation and a Report of Medical Examination on 11 July 1978 showed no indication of any mental health symptoms, but it was noted that the applicant had a history of head injury. A review of VA records showed no indication that the applicant had received VA services, and a community health summary did not indicate any mental health diagnoses or history of TBI.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD and TBI while on active service. He attributed these diagnoses to a wrecker accident that occurred on 1 June 1976.

(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), including PTSD, while on active service, and there is no evidence of a diagnosis of PTSD post-discharge. The applicant's medical records from 1 June 1976 do show a report of an accident, which occurred on 27 May 1976, and the applicant reported loss of consciousness "for a few

minutes.” There was no brain imaging or referral for neuropsychological testing, but the applicant was diagnosed with a mild concussion although there was no notation of any typical symptoms of concussion (i.e. headaches, dizziness, fatigue). While a concussion is considered a mild TBI that can result in some impairment of mental functioning, typically symptoms have remitted by one week to a month post-injury. The applicant’s misconduct related to failure to report to duty potentially could be a natural sequela to a TBI, but it is difficult to fully mitigate that misconduct due to lack of evidence of a moderate to severe TBI, which would have symptoms lasting greater than three months. Because of the time period in which the accident occurred, the lack of knowledge about TBI, and in accordance with Liberal Consideration, the board could consider partial mitigation of the applicant’s misconduct. However, there is insufficient evidence of a fully mitigating experience while on active service.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon further review of the applicant’s petition, available military records, and medical review, one Board member considered the potential outcome of granting partial relief by upgrading the characterization of service to under honorable (general) conditions, recognizing that the initial discharge may have been disproportionately harsh for minor offenses based on current day standards. However, the Board majority concurred with the advising opinion of the Agency Behavioral Health Advisor, determining that insufficient evidence exists to support that the applicant had a condition or experience that fully mitigates the misconduct.

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services, and a community health summary did not indicate any mental health diagnoses or history of TBI.

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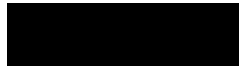
2. Furthermore, the Board noted that the applicant did not provide post-service accomplishments or character letters for consideration in a clemency determination. Given the lack of in-service mitigating factors to outweigh the misconduct, the Board concluded that the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested discharge upgrade from under other than honorable conditions (UOTHC) to honorable. Based on this, reversal of the prior Board decision is without merit, and relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	█	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20130020811 on 4 August 2014.



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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time provided the authority and general provisions governing the separation of enlisted personnel prior to the end of their ETS to meet the needs of the service and its members. It provided the criteria governing issuance of honorable, general, and under other than honorable discharge certificates.

a. Paragraph 1-13(a) provided an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-13(b) provided a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is

satisfactory but not sufficiently meritorious to warrant an honorable discharge. The recipient of a general discharge is normally a member whose military record and performance is satisfactory. The member may have had frequent nonjudicial punishments but not for serious infractions. He may be a troublemaker, but his conduct is not so bad as to require discharge for cause or a discharge under less than honorable conditions.

c. Paragraph 1-13(c) provided a discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, for security reasons, or for the good of the service.

d. Paragraph 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent enlistment/reenlistment, conviction by civil court (members who have been initially convicted or adjudged juvenile offenders), desertion and absence without leave, and other acts or patterns of misconduct.

e. Paragraph 14-33(b). Other Misconduct. Members are subject to separation under the provisions of this section for patterns of misconduct.

f. Paragraph 14-33(b)1, for frequent incidents of discreditable nature with civil or military authorities.

2. 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.

3. 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.

4. 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/NR) 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.

5. 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.

//NOTHING FOLLOWS//