

IN THE CASE OF [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240001577

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable, due to disability; and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement, dated 11 January 2024
- DD Form 149, dated 4 November 2024
- Army Service Records (9 pages), dated 3 November 1998 to 9 November 2000
- Social Security Administration (SSA), Office of Hearing Operations Decision and Notice of Decision, dated 25 January 2023
- letter, Department of Veterans Affairs (VA), dated 27 December 2023
- VA Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire (2), dated 18 January and 30 January 2024
- letter, VA, dated 30 January 2024
- letter, [REDACTED] Mental Health Center, dated 14 March 2018
- letter, [REDACTED], undated
- letter, Superior Innovative Services, dated 10 January 2024
- letter, [REDACTED] Licensed Psychologist, dated 28 January 2024
- statement of support, [REDACTED] undated

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 was mentally disabled during his military service and did not receive any treatment. He experienced the following incidents while stationed at Fort Leonard Wood, MO, and Fort Eustis, VA:

a. At Fort Leonard Wood, he encountered screaming, which involved cursing, abusive language, and aggressive behavior directed towards him and others. He developed anxiety, depression, insomnia, loss of appetite, social withdrawal, and low self-esteem. During a battalion run, he was aggressively approached by a command sergeant major (CSM), who assaulted him by grabbing his arm and pushing him out of the run. The CSM called him a “nigger.” He reported the incident to his drill sergeant. It was dismissed and no further action was taken.

b. While stationed at Fort Eustis, he experienced constant harassment from a sergeant first class (SFC), who was very aggressive towards him, would bang on his barracks room door, and do random inspections. On one occasion, the SFC aggressively put his hands on him, grabbed him, and pushed him with force. The SFC then challenged him to a fight. He was afraid for his life. He was singled out and not given proper training. He reported the pattern of abuse and harassment to his commander and was transferred to another company. He experienced depression, anxiety, loss of appetite, and withdrawal from others.

c. After his transfer, he felt racially targeted, isolated, and discriminated against by a sergeant (SGT). The SGT used racial slurs, often calling him “boy.” He experienced constant harassment and was not given any formal training. He would hear racist jokes and his leaders would be present and engaged in laughing at the jokes. He dreaded going to work in the hostile environment, which induced panic, fear, and restlessness. He began using alcohol heavily.

d. The applicant notes PTSD, other mental health, and harassment as conditions related to his request.

3. The applicant enlisted in the Regular Army on 7 January 1999, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). The highest rank he attained was private/E-2.

4. A Military Police Report (MPR) and associated Investigator’s Statement, dated 29 August 2000, shows that on 14 July 2000, [the applicant] had the victim, [REDACTED] cash two checks for him, in the amount of \$300.00 per check, at Langley Air Force Base Exchange, knowing he did not have the money in his checking account to cover the checks. He was advised of his rights, which he waived, and provided a sworn statement. He stated he had [REDACTED] cash the checks because he lost his identification card. He was having pay problems, and finance told him his pay would be in his bank account. He did not check before cashing the checks. He needed to pay bills. He was charged with making, drawing, or uttering checks without sufficient funds and released to his unit.

5. A Military Police (MP) Blotter Report, dated 23 October 2000, and two Investigator's Statements, dated 21 October 2000, show the following:

a. The applicant fraudulently identified himself as an MP to three Montgomery Ward Loss Prevention Officers for the purpose of gaining employment. He arrived at an interview wearing his uniform, MP brassard, and a 9mm pistol. He arrived at a second interview in civilian dress but identified himself as an MP and displayed an MP badge. He later obtained a Criminal Information Network report and National Criminal Information Center report on an individual by presenting himself as an MP at the Newport News Police Precinct and to a local magistrate.

b. After being fired for an unrelated reason, the Loss Prevention Officers became suspicious and contacted the Fort Eustis Provost Marshalls Office (PMO). The PMO confirmed the applicant was not an MP. He was apprehended and advised of his rights. After waiving his rights, he rendered a sworn statement admitting to the offenses. He wanted to identify individuals who were involved in narcotics. He was taken to the Criminal Investigation Division (CID) and interviewed. He was returned to the PMO and placed in a detention cell.

c. The applicant's commander and first sergeant arrived at the PMO and stated they believed the applicant had a weapon at his residence. The MPs obtained consent to search the residence, which resulted in one MP badge, one set of hand irons, one can of law enforcement grade pepper spray, one receipt depicting the applicant belonged to the 89th MP Company, four rounds of 9mm ball ammunition, and a bag containing a greenish brown substance which tested positive as tetrahydrocannabinol (THC).

6. A Forensic Toxicology Report, dated 23 October 2000, shows that a specimen provided by the applicant on 4 October 2000 tested positive for THC.

7. Court martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 27 October 2000. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with the following:

- two specifications of intent to defraud for the procurement of lawful currency, by delivering two checks to [REDACTED] checks drawn upon USAA Federal Saving Bank, in the amount of \$300.00 per check, knowing he did not have funds for the payment of said checks, on or about 6 May and 7 May 2000
- wrongfully possessing marijuana, on or about 20 October 2000
- wrongfully and willfully impersonating an MP with the intent to defraud and obtain employment, on divers occasions, between on or about 20 August 2000 and 18 September 2000

- wrongfully and willfully impersonating an MP to a law enforcement official and exercising the authority of an MP by requesting and obtaining law enforcement documents from said law enforcement official, on or about 20 September 2000
- wrongfully and willfully impersonating an MP to a city magistrate, by informing him he had the credentials of an MP; and exercising the authority of an MP by requesting and obtaining law enforcement documents from said magistrate, on or about 20 September 2000

8. The applicant consulted with legal counsel on 1 November 2000.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged understanding that by requesting a discharge, he was admitting guilt to the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits; he could be ineligible for many, or all benefits administered by the Veterans Administration; and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

9. The applicant's immediate and intermediate commanders recommended approval of the requested discharge and further recommended an UOTHC character of service.

10. On 6 November 2000, the separation authority approved the requested discharge and directed a UOTHC characterization of service.

11. The applicant was discharged on 9 November 2000, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code KFS and reentry code 3. He completed 1 year, 9 months, and 23 days of net active service. He was authorized or awarded the Army Service Ribbon.

12. On 3 September 2024, in the processing of this case the U.S. Army CID, searched their criminal file indexes, which revealed no CID/MP Sexual Assault records pertaining to the applicant.

13. The applicant provides the following:

a. Nine pages of Army Service Records, dated 3 November 1998 to 9 November 2000, which are summarized in the Record of Proceedings (ROP) above.

b. A decision and notice of decision from the SSA, Office of Hearing Operations, dated 25 January 2023, shows the SSA determined the applicant continued to be disabled and would continue to receive benefits.

c. Two letters from the VA, dated 27 December 2023 and 30 January 2024, acknowledge the applicant's intent to file a claim and the subsequent receipt of his claim on 26 January 2024.

d. The applicant completed the VA PTSD Disability Benefits Questionnaire on 18 January and 30 January 2024. Any pertinent information included in the questionnaires will be summarized in the medical review portion of this ROP.

e. Four letters from behavioral health providers who are or have treated the applicant, note his diagnoses of PTSD, major depressive disorder, panic disorder, and anxiety disorder. Two providers opine that his conditions were caused by or exacerbated by his military service. He benefits greatly from his service animal.

f. In a statement of support from [REDACTED] dated 11 January 2024, the author states she encountered racism, from subtle microaggressions to overt acts of discrimination, throughout her military career. These experiences left an indelible mark on her psyche and caused feelings of isolation, frustration, and anger. The stress of facing racism and the complexities of everyday life took a toll on her mental and physical well-being. She encountered a hostile work environment, rife with discrimination and mistreatment, fueled by prejudice and ignorance. Fear of being targeted and lack of support from superiors caused a sense of hopelessness. The effects of harassment are long lasting. It is her hope to share her experience to raise awareness about the impact of this adversity.

14. The applicant's application package includes correspondence between the Office of Representative [REDACTED] and the Army Review Boards Agency (ARBA), dated 8 October 2024 to 13 November 2024, which includes a congressional inquiry and subsequent responses from ARBA.

15. Discharges under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable, due to disability. The applicant selected post-traumatic stress disorder (PTSD), other mental health, and harassment on his application as related to his request.

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 enlisted in the Regular Army on 7 January 1999.
- A Military Police Report (MPR) and associated Investigator's Statement, dated 29 August 2000, shows that on 14 July 2000, [the applicant] had the victim, [REDACTED] cash two checks for him, in the amount of \$300.00 per check, at Langley Air Force Base Exchange, knowing he did not have the money in his checking account to cover the checks. He was advised of his rights, which he waived, and provided a sworn statement. He stated he had [REDACTED] cash the checks because he lost his identification card. He was having pay problems, and finance told him his pay would be in his bank account. He did not check before cashing the checks. He needed to pay bills. He was charged with making, drawing, or uttering checks without sufficient funds and released to his unit.
- Court martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 27 October 2000. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with the following:
- two specifications of intent to defraud for the procurement of lawful currency, by delivering two checks to [REDACTED] checks drawn upon USAA Federal Saving Bank, in the amount of \$300.00 per check, knowing he did not have funds for the payment of said checks, on or about 6 May and 7 May 2000
- wrongfully possessing marijuana, on or about 20 October 2000
- wrongfully and willfully impersonating an MP with the intent to defraud and obtain employment, on divers occasions, between on or about 20 August 2000 and 18 September 2000
- wrongfully and willfully impersonating an MP to a law enforcement official and exercising the authority of an MP by requesting and obtaining law enforcement documents from said law enforcement official, on or about 20 September 2000

- wrongfully and willfully impersonating an MP to a city magistrate, by informing him he had the credentials of an MP; and exercising the authority of an MP by requesting and obtaining law enforcement documents from said magistrate, on or about 20 September 2000
- After receiving legal counsel, on 1 November 2000, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10.
- Applicant was discharged on 9 November 2000, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code KFS and reentry code 3.

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 he was mentally disabled during his military service and did not receive any treatment. In addition, he cited incidents of racial harassment and bullying.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant did not provide any medical documentation from his time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there were no behavioral health records available for review. The applicant provides a document from the Social Security Administration, dated 25 January 2023, that indicates the applicant was found to be disabled as of 11 September 2004. This is post-military service, and the document does not indicate the nature of the applicant's disability. The applicant provides a Disability Benefits Questionnaire he provided to the VA, dated 18 January 2024, where the applicant appeared to check off every item on the form and a medical practitioner, not a mental health provider, signed the document and diagnosed him with Major Depressive Disorder, Anxiety, and Panic Disorder. The provider cites the applicant's substance use since military service. The applicant provides a second Disability Benefits Questionnaire he provided to the VA, dated 20 January 2024, where a clinician diagnosed him with Major Depressive Disorder, PTSD, Panic Disorder, and Anxiety Disorder based on the applicant's self-report during a one-time video encounter with no objective testing.

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. However, regardless of BH condition none of the applicant's asserted conditions would mitigate his discharge. In addition, no probative contemporaneous medical documentation was submitted with the application for review. There is no evidence the applicant had any medical or mental health condition that failed the

medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his separation. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his grade, rank, or rating prior to separation.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD, OMH, and harassment on his application as related to his request.

(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.

(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 applicant provides medical documentation over 20 years post-military service indicating diagnoses of PTSD, Anxiety, Major Depressive Disorder, and Panic Disorder. The applicant was discharged from military service due to two specifications of intent to defraud; wrongfully impersonating an MP with the intent to defraud and obtain employment, on diverse occasions; wrongfully impersonating an MP to a law enforcement official and obtaining law enforcement documents; and wrongfully impersonating an MP to a city magistrate and obtaining law enforcement documents. None of these acts are part of the history or natural sequelae of the applicant's asserted BH conditions. In addition, the forethought required to impersonate an MP repeatedly for either financial gain and/or to obtain unauthorized privileged and confidential law enforcement documents as well as defrauding another soldier, indicates this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, planful, conscious decision-making. Even if PTSD, Anxiety, Major Depressive Disorder, or Panic Disorder symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the findings in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

3/31/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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 (USC), 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 Army Board for Correction of Military Records (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, USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).
4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
 - a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.
 - b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.
5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

The regulation provides that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

6. 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. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

7. 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. 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.

8. 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//