

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240001647

APPLICANT REQUESTS: correction of his records to show he was separated due to service-incurred medical disabilities.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, 19 April 2023

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 had an accident in the Korean demilitarized zone involving an amphibious vehicle. He was assigned to a communications platoon, and they were given an immediate order to move locations at night. While coming down a mountain, the vehicle flipped over, and he hit his head many times. His helmet was lodged into his head causing a brain injury. He was the last Soldier extracted from the vehicle, and he had all the other Soldiers and equipment on top of him. He experienced a dramatic personality change after the accident causing issues in his platoon. He has not been in trouble since his discharge, and he has been a model citizen. He cannot work and he needs military help with medical benefits and compensation due to his inability to earn an income. He was found 100% disabled by the VA due to major depressive disorder, vertigo, arthritis, sleep apnea, post-traumatic stress disorder (PTSD), and tinnitus. He also indicated in his application his request is based on PTSD, traumatic brain injury (TBI), and sexual assault/harassment.
3. The applicant's complete military records, including his separation proceedings, are not available. His DD Form 214 (Report of Separation from Active Duty) shows:
 - He entered active duty in the Regular Army on 8 April 1976
 - He served in Korea from 3 September 1976 to 30 August 1977

- He had 40 days of time lost
- He was discharged on 3 February 1978 under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), chapter 10 (for the good of the service-in lieu of trial by court-martial)
- He received a character of service of under other than honorable conditions

4. The applicant provided a VA Rating Decision, dated 19 April 2023, showing he is entitled to medical care by the VA for tinnitus and head injury, right and left side head with associated PTSD and claimed headaches.

5. During the processing of this application, the staff of the Army Review Boards Agency submitted a request for records pertaining to the applicant to the U.S. Army Crime Records Center, part of the U.S. Army Criminal Investigation Command. On 17 July 2024, the U.S. Army Crime Records Center responded by letter stating a search of Army criminal file indexes revealed no records pertaining to the applicant. This request for records was submitted based on the applicant's indication that he experienced sexual assault/harassment during his military service.

6. 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. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge to a medical discharge. The applicant contends PTSD, TBI, and military sexual trauma (MST) are related to his request. 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's complete military records, including his separation proceedings, are not available. However, his DD214 was available for review; 2) The applicant enlisted in the Regular Army on 08 April 1976; 3) The applicant was discharged on 03 February 1978, AR 635-200, Chapter 10- for the good of the service-in lieu of trial by court-martial. His character of service was under other than honorable conditions. He completed 1 year, 9 months, and 26 days of net active service with 40 days of time lost.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documents provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant indicated on his application that PTSD, TBI, and MST are related to his request for an upgraded discharge. In addition, he asserted that these conditions warrant a medical discharge. At this time, there is insufficient evidence the applicant reported or was diagnosed with a TBI or a mental health condition including PTSD, during his active service.

d. A review of JLV provided evidence the applicant has undergone multiple Compensation and Pension (C&P) evaluations starting in 2019, for both physical and mental health concerns. There is evidence the applicant was evaluated both in 2019 and 2023 for both service-connected TBI and mental health conditions including PTSD. The applicant reported being exposed to a vehicle rollover accident on 09 November 1976. As a result, the applicant has been diagnosed with a service-connected TBI and PTSD in 2019. He again underwent another C&P evaluation in 2023 and was diagnosed with service-connected major depressive disorder, moderate, PTSD, and major neurocognitive disorder due to traumatic brain injury. The applicant was not awarded a service-connected disability percentage for these nor for his other service-connected physical concerns, instead they were determined for treatment purposes only. The applicant provided a hard-copy, 19 April 2023 VA rating decision for review that confirm the electronic medical records available. There is insufficient evidence the applicant is presently involved in the VA for medical or behavioral health treatment. In addition, there was insufficient evidence the applicant reported to the VA during his evaluations of his exposure to MST during his active service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant did experience TBI and resulting mental health conditions including PTSD while on active service. In addition, the applicant did indicate on his application MST was related to his request. However, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of these conditions and reported experience. In addition, there is insufficient evidence the applicant was experiencing a condition which warrants a referral to the Integrated Disability Evaluation System (IDES) to be assessed for a medical discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts that he experienced a TBI, PTSD, and MST that mitigate his misconduct and justify a medical discharge. The applicant underwent several C&P evaluations that documented VA service-connected diagnoses and treatment of TBI, PTSD, major neurocognitive disorder due to TBI, as well as major depressive disorder, moderate.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced TBI and mental health conditions including PTSD attributed to his time in service through his VA C&P examinations. The applicant also asserted that MST during his time in service as a part of his request.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant did experience TBI and resulting mental health conditions including PTSD while on active service. In addition, the applicant did indicate on his application MST was related to his request, but there is insufficient evidence beyond this available information. There is also insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of these conditions and reported experience. In addition, there is insufficient evidence, the applicant was experiencing a condition which warrants a referral to IDES to be assessed for a medical discharge. Specifically, there is insufficient evidence the applicant was diagnosed with a condition, which was determined to not meet retention standards, prior to his discharge. However, per Liberal Consideration, his contention alone is sufficient for the Board's consideration.

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 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. Based upon the misconduct leading to the applicant's separation and the recommendation found in the medical review related to liberal consideration, the following Kurta Questions were considered:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts that he experienced a TBI, PTSD, and MST that mitigate his misconduct and justify a medical discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced TBI and mental health conditions including PTSD attributed to his time in service through his VA C&P examinations.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant did experience TBI and resulting mental health conditions including PTSD while on active service. In addition,

the applicant indicates on his application MST was related to his request, but there is insufficient evidence beyond this available information.

2. The Board concurred with the medical advisor's review finding insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation. The Board concluded there was insufficient evidence the applicant was experiencing a condition which warrants referral to the IDES. Therefore, the request for relief was denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X //SIGNED//

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.

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) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who committed an offense or offenses under the Uniform code of Military Justice for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of Department of Veterans Affairs benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An under other than honorable conditions discharge was normally considered appropriate.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 1-2c, of the regulation in effect at the time, states a member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing.

5. Title 38, U.S. Code, Sections 1110 and 1131, permit the 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.

6. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. 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.

7. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//