

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20240001665

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Five-character letters
- 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 that after being deployed to France on a special mission for 24 days, his unit returned to their base in Germany. First Lieutenant (1LT) [REDACTED] had taken over command from Captain (CPT) [REDACTED] who had retired. CPT [REDACTED] had obtained a security clearance for the applicant and sent him on various training missions. During a training exercise in the field, the applicant made 1LT [REDACTED] look bad when he captured him; 1LT [REDACTED] was with another unit at the time. As the applicant went to lay on his bunk 1LT [REDACTED] came and punched him in the chest and jerked him out of the bunk. Later he discovered that 1LT [REDACTED] had just been assigned as his unit's commander. The applicant had words with 1LT [REDACTED] about his treatment, and the applicant punched the 1LT. The applicant feels 1LT [REDACTED] held a grudge against him ever since the training incident. The applicant did not know he could get his discharge upgraded until speaking with a veterans service officer. The applicant is in the process of filing a claim with the Department of Veterans Affairs for PTSD related to an incident that occurred while in France. He cannot sleep at night, and he suffers from nightmares, depression, and anger issues.

3. The applicant provides:

a. Five-character statements of which two are below and the additional character statements can be found in the supporting documents:

(1) The applicant is consistently described as a resolute, dependable, and community-minded individual. Across all five-character statements, common themes include his willingness to offer help without hesitation, often during times of need, whether it be after storms, for neighbors in distress, or to address community issues like water system repairs. He shows a keen sense of duty, but also through his contributions to his local community, volunteering his time, tools, and ability. His adaptability and hard work are noted, especially in roles requiring quick thinking and responsibility, like his position as a bridge tender. Regardless of the situation, he is always described as dependable, compassionate, and dedicated to helping others, making him an invaluable asset to both his community and those who know him personally.

(2) The applicant exemplifies the traits of a selfless and resolute individual, always ready to offer his time and skills to better the lives of those around him. Whether through his unwavering commitment to neighbors, his willingness to step in during emergencies, or his reliability in professional settings, he consistently shows the values of hard work, patriotism, and service to others. His character is one of integrity, responsibility, and kindness, and he undoubtedly deserves any consideration or support he may seek.

b. The applicant also provides his DD Form 214.

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

a. He enlisted in the Regular Army on 6 May 1980.

b. On 3 June 1981, the applicant received a letter of reprimand which shows, on or about 31 March 1981 the military police had charged the applicant with adultery.

c. A DA Form 2496-1 (Disposition Form) dated 7 October 1981 shows, the immediate commander advised the applicant of his intent to disqualify the applicant permanently from the personnel reliability program (PRP). He felt that the applicant is no longer qualified to perform his duties as required by the military occupational specialty (MOS) and grade or position for the following reason per AR 50-5 (Nuclear and Chemical Weapons and Materiel) chapter 3, paragraph 3-12-5 aberrant behavior. The applicant was advised as a result of these actions the applicant may be reclassified and reassigned involuntarily outside of the organization. On the same day the applicant acknowledged the receipt of this memorandum and did not request reclassification into any MOS's.

d. On 9 October 1981, the immediate commander notified the applicant that he was permanently disqualified from the PRP, and his actions were considered aberrant behavior, which disqualified the applicant in accordance with AR 50-5.

e. On 9 October 1981, the approving authority approved the request for disqualification of the applicant and MOS reclassification was not required.

f. On 23 October 1981, he accepted nonjudicial punishment for three specifications of failure to report to prescribed place of duty (on or about 16 October 1981 and 19 October 1981) and two specifications of disobeying a lawful order by a non-commissioned officer. His punishment included reduction to private second class (PV2)/E-2.

g. On 18 November 1981, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of paragraph 5-31, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) and he recommended the applicant be furnished a General Discharge Certificate. The specific reasons for his proposed recommendation were repeated constant misbehavior, unmilitary behavior, lack of military bearing, failure to correct actions, multiple article 15's and a letter of reprimand. The applicant acknowledged receipt of this notification.

h. The immediate commander initiated separation action against the applicant under the Expeditious Discharge Program (EDP) for failure to maintain acceptable standards for retention. He recommended the applicant be issued a General Discharge Certificate.

i. The separation authority approved the discharge recommendation. He would be issued a General Discharge Certificate.

j. A DA Form 2496-1 dated 7 December 1981 shows the applicant was advised of his right to undergo a separations examination. The applicant did not desire a separation medical examination. The medical treatment facility conducted a review of the applicant's medical records and determine that an examination for separation was not required.

k. Orders 352-216, dated 18 December 1981, discharged the applicant from active duty with an effective date of 18 December 1981.

l. On 18 December 1981, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 7 months, and 13 days of active service. The narrative reason for separation listed as "Failure to Maintain Acceptable Standards for Retention (EDP))."

5. AR 635-200, paragraph 5-31c, provided for the expeditious elimination of substandard, nonproductive soldiers before board or punitive action becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative separation boards by providing a means to separate such personnel expeditiously before they progress to the point where board or punitive action becomes necessary.

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

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions characterization of service to honorable. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD) is 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 enlisted in the Regular Army (RA) on 06 May 1980, 2) he received a letter of reprimand on 03 June 1981 for being charged with adultery, 3) on 09 October 1981, the applicant was permanently disqualified from the personnel reliability program (PRP) due actions that were considered aberrant behavior, 4) on 23 October 1981 he received nonjudicial punishment for three specifications of failure to report and two specifications of disobeying a lawful order by a noncommissioned officer, 5) the applicant's commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, paragraph 5-31, with the reasons for the proposed action noted as repeated constant misbehavior, unmilitary behavior, lack of military bearing, failure to correct actions, multiple article 15s, and letter of reprimand. The applicant was discharged on 18 December 1981 with a separation code of JGH and narrative reason for separation listed as "Failure to Maintain Acceptable Standards for Retention (EDP)."

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is 60% service-connected for impaired hearing and tinnitus through the VA. He is not service-connected for any BH conditions. Although he noted on his application that he has filed a claim for PTSD with the VA, there was no documentation available for review through JLV or the Veterans Benefits Management System (VBMS) regarding his claims. Clinically, the applicant is diagnosed with Nightmare Disorder and prescribed Prazosin for treatment of his nightmares by his primary care provider. His pain management provider noted the following BH-related co-morbid conditions associated with his pain conditions: Complex Persistent Opioid Dependence, PTSD with Nightmares, Depression/Anxiety/Mood Disorder, and Insomnia. The provider also documented that the applicant reported his depression and anxiety began in the military though did not provide any additional information. It is of note that the diagnosis of PTSD and other BH conditions are typically rendered by specialty behavioral health providers and there is no documentation available for review that he has been diagnosed by a BH provider nor any documentation available specifying a Criterion A trauma which is necessary to establish the diagnosis of PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. There were no in-service medical records available for review and he is not service-connected through the VA with any BH conditions. Although the applicant's pain management physician noted several BH conditions in his record, there is no documentation available that the applicant has ever been diagnosed by a BH provider nor was there sufficient information to associate his condition(s) with his military service. However, he contends his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Review of JLV shows the applicant is not service-connected through the VA for any BH conditions nor is there any BH documentation available diagnosing the applicant with PTSD owing to his military service. Although his pain management physician has noted he has several co-morbid

BH conditions associated with his pain conditions to include Complex Persistent Opioid Dependence, PTSD with Nightmares, Depression/Anxiety/Mood Disorder, and Insomnia, and has also been diagnosed with Nightmare Disorder, these diagnoses are typically rendered by specialty BH providers. Moreover, the applicant is not service-connected through the VA for these conditions nor was there sufficient information to associate these conditions with his military service. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation.

#### 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.
2. 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 Board considered his disqualification from the PRP and the circumstances that led to his separation under the Expeditious Discharge Program. The Board considered the review and conclusions of the medical advising official, the absence of a VA service connected BH diagnosis and the four Kurta questions. The Board concurred with the conclusion that there was insufficient evidence of a mitigating BH condition at the time of his service. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

4/28/2025

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.

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 50-5 (Nuclear and Chemical Weapons and Materiel), Any of the medical conditions, traits, or behavioral characteristics listed below will be considered disqualifying for -nuclear duty training or assignment, unless overriding evidence of

reliable duty performance exists: Any significant physical or mental condition that may impair judgment or reliability as substantiated by competent medical authority, character trait, or aberrant behavior that in the judgment of the commander affects reliable performance of the duties of a nuclear duty position.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least 6 months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

c. Paragraph 5-31c, this policy will provide for the expeditious elimination of substandard, nonproductive soldiers before board or punitive action becomes necessary. These provisions are intended to relieve unit commanders of the administrative burden normally associated with processing eliminations for cause through administrative separation boards by providing a means to separate such personnel expeditiously before they progress to the point where board or punitive action becomes necessary.

3. Army Regulation 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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.

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6. 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.

7. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

//NOTHING FOLLOWS//