

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 October 2024

DOCKET NUMBER: AR20240001765

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statement, 16 December 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, in effect:

a. He comes from a family that has served proudly in the military for many generations. He enlisted right out of high school with the dreams and hope of fulfilling a military career and retiring with honors, but unfortunately that did not happen. He started his military journey at Fort Knox for basic training, then to Fort Benjamin Harrison for advanced individual training (AIT). His first duty station was Camp Casey, Korea, working in the personnel department. He was young and impressionable, and never really thought of how close to danger they were.

b. When he was in the replacement detachment, on the second night an alarm went off and they were locked in. To see Soldiers walking around with loaded M16s was real. He asked one of the Soldiers what was going on and he explained that it was an exercise to get ready. If North Korea decided to move South, they were there to slow them down from moving to Seoul. Things became clear and he believes it triggered something inside of him.

c. He was scared one day at the range when a Soldier froze up and the drill sergeant had to take the grenade out of the Soldier's hands and throw it. The drill sergeant threw him down in the bunker and shielded him from the explosion. He has never forgotten that day, and the effects of that event and the way it made the earth move. Those incidents during his career changed him in ways he never knew or expected. These events caused him to start hiding his concerns and worries, and drinking became his only escape, by drowning his feelings of being scared and vulnerable. Drinking became his best friend.

d. His next duty assignment was Fort Carson, CO. Things in the United States were a lot different than Korea. Unfortunately, he started where he left off in Korea with the drinking, and he drank pretty much every night. One night it caught up with him and he received a drinking under the influence (DUI) on post after coming back from a bar off post. Things went downhill very fast from that point on. He was disciplined and received an Article 15, with extra duty and a deferred reduction in rank for one year. He wishes that he had someone in his chain of command at the time that would have taken the time to help a hurting Soldier and maybe send him down another path. By this time, he was deep in depression, anxiety, alcoholism, and experiencing post traumatic stress disorder (PTSD). He truly believes that had he been offered help, he could have been a better man and Soldier.

e. While in the military he received various awards and decorations. Since being discharged, he became a certified nursing assistant (CNA), received his commercial driver's license (CDL) class B, and has been employed with his current employer for over 12 years. He donates blood, gives food to the homeless and sleeping bags and dog food for their dogs. He goes to therapy to maintain his mental health, which has its ups, downs, and struggles. He has been sober for over 15 years. He has been married for over 10 years and they have two children. He has grown as a man, father, and husband. He would like to change this negative stain from his military records.

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

a. The applicant enlisted in the Regular Army on 7 August 1984.

b. On 5 February 1988, he received a counseling for being picked up by the Fort Carson Military Police for driving while intoxicated (DWI).

c. A memorandum dated 8 February 1988, which shows his post driving privileges were suspended as a result of the offense of drunken driving. He was ordered not to drive any privately owned vehicle within the confines of the Fort Carson Military Reservation, Peterson Air Force Base, or the U.S. Air Force Academy during the suspension period.

d. A memorandum dated 24 February 1968, which shows the applicant received an Administrative Reprimand from the Assistant Division Commander for his misuse of alcohol and unsafe operation of a motor vehicle. The Reprimand was not punishment under Article 15, Uniform Code of Military Justice (UCMJ). However, it would be filed in his official military personnel file (OMPF), unless the applicant provided an excuse for his conduct or matters in extenuation and mitigation which would convince the Brigadier General that such filing was not warranted.

e. On 24 February 1988, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ for on or about 5 February 1988 operating a vehicle while drunk. His punishment included reduction to private (PV2)/E-2, suspended to be automatically remitted if not vacated before 19 August 1988; forfeiture of \$100.00 per month for two months; restriction for 45 days; extra duty for 45 days.

f. On 29 February 1988, the applicant acknowledged that he read the Reprimand and understood the unfavorable information presented against him and did not elect to submit statements or documents in his own behalf.

g. He was counseled on 11 March 1988 for being drunk and possibly drinking on duty.

h. On 12 April 1988, the suspension of the punishment to reduction to private (PV2)/E-2, suspended, to be automatically remitted if not vacated before 19 August 1988, imposed on 24 February 1988, was vacated. The unexecuted portion of the punishment was duly executed. Vacation was based on the following offense: the applicant did on or about 8 April 1988, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: training formation.

i. The applicant underwent a mental status evaluation on 13 April 1988. The Division Psychiatrist diagnosed the applicant with passive aggressive personality disorder. He stated there was no psychiatric disease or defect which warranted disposition through medical channels. The diagnosis represented a character and behavior disorder within the meaning. The applicant was mentally responsible, able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings. The problems the applicant presented were not, in the opinion of the examiner, amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It was unlikely that efforts to rehabilitate or develop the applicant into a satisfactory member of the military would be successful. The personality disorder was of such severity that it impaired the applicant's ability to perform his daily military duties. The psychiatrist cleared the applicant for any administrative action deemed appropriate by his Command.

j. The applicant was counseled on 21 July 1988 by his commander regarding his intent to eliminate him from service.

k. On 18 August 1988, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12c, by reason of misconduct. The commander listed the following reasons for the proposed action: he committed acts of misconduct, i.e., convicted of DUI on post and failure to go to his appointed place of duty. In addition, he had a personality disorder so severe that it impaired his ability to perform effectively in the military. The commander informed the applicant that he was recommending he receive a general, under honorable conditions discharge, and he explained his rights.

l. On 22 August 1988, the applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him for misconduct under AR 635-200, chapter 14, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He understood that if he had less than 6 years of total active and Reserve military service at the time of separation and was being considered for separation for reason of misconduct under AR 635-200, Chapter 14, he was not entitled to have his case heard by an administrative separation board unless he was being considered for a discharge under other than honorable conditions. He understood the following:

(1) If separation was to be accomplished by the general court-martial convening authority, he requested a personal appearance and consideration of his case by a board of officers.

(2) He waived a personal appearance and consideration of his case by a board of officers on the condition that he receive an honorable or general discharge.

(3) He elected not to submit statements in his own behalf.

(4) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions or other than honorable discharge was issued to him.

(5) He understood that there was no automatic upgrading of any type of discharge, and that if discharged, he would be ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

(6) He further understood that, if he received a discharge certificate or character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized

that an act of consideration by either Board did not imply that his discharge would be upgraded.

m. On 19 August 1988, the applicant's immediate commander formally initiated and recommended separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c for commission of a serious offense and chapter 5, paragraph 5-13 for a personality disorder.

n. On 9 September 1988, the separation authority approved the recommended discharge under the provisions of AR 635-200, chapter 14, paragraph 14-12c, and directed the applicant be issued an under honorable conditions (general) discharge, and not be placed in the Individual Ready Reserve.

o. The applicant was discharged on 12 September 1988. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12, by reason of misconduct – commission of a serious offense. His service was characterized as under honorable conditions (general). This form shows in:

- Item 12c (Net Active Service This Period): 4 years, 1 month, and 6 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Army Good Conduct Medal, Overseas Service Ribbon, the Expert Marksmanship Qualification Badge with rifle bar (M-16), and Hand Grenade Sharpshooter Qualification bar.
- Item 26 (Separation Code): JKQ
- Item 27 (Reenlistment Code): RE 3

4. There is no indication the applicant applied to the ADRB for review of his discharge processing within the Board's 15-year statute of limitations.

5. 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.

6. 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 honorable. 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
- The applicant
- The applicant was discharged on

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts 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 also reviewed and showed no history of mental health related treatment or 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 condition or experience that 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, at the time of the misconduct.

(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? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant committed a serious offense (DUI on post and failure to go to his appointed place of duty). As a result, his chain of command initiated separation action against him for misconduct and he received a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

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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), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provide the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. In effect at the time, the regulation showed Soldiers separated under the provisions of AR 635-200, paragraph 14-12c, with a narrative reason of misconduct – commission of a serious offense, would receive SPD code "JKQ."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

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.

8. 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//