

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240002449

APPLICANT REQUESTS: In effect, upgrade of his under honorable conditions discharge to an honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- 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 during his tour of service he suffered from depression and did not know it. He also hit his head in the latrine. He was all set on making a career out of the Army.
3. The applicant provides his DD Form 214, which shows his record of service.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 1 March 1979.
 - b. His DA Form 20 shows he was absent without leave (AWOL) 12 June-16 June 1980.
 - c. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) dated 24 June 1980 shows the applicant accepted non-judicial punishment (NJP) for AWOL on or about 12 June-16 June 1980.

d. DA Form 2627 dated 24 June 1980 shows the applicant accepted NJP for writing several checks for the purpose of collecting lawful currency or items of value and dishonorably failed to maintain sufficient funds in the bank.

e. The available service record is void his Report of Mental Status Evaluation.

f. On 27 August 1980, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13-4c, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for Unsuitability.

g. After consulting with legal counsel, he requested a discharge for Unsuitability under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he is ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge

h. The immediate commander initiated a request for the applicant to be eliminated from the service for Unsuitability under the provisions of paragraph 13-4c, chapter 13. The commander indicated that this action is based upon his defective attitude and an inability to expend his effort effectively.

i. Consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for elimination from the service under the provisions of paragraph 13-4c, chapter 13, AR 635-200, be discharged from the military service by reason of Unsuitability. He would be issued a General Discharge Certificate.

j. On 12 September 1980, he was discharged from active duty with an under honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 7 months, and 8 days of active service with 4 days of lost time. It also shows he was awarded or authorized the:

- Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service to honorable. On his DD Form 214, he indicated Traumatic Brain Injury (TBI) is related to his request. More specifically, he indicated that during his tour of service he suffered from depression, though he did not know it. He also indicated he hit his head in the latrine. 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 01 March 1979, 2) he received an article 15 for being absent without leave (AWOL) from 12-16 June 1980, 3) DA Form 2627 shows he received nonjudicial punishment for, in effect, writing bad checks, 4) He was discharged on 12 September 1980 under the provisions of Army Regulation (AR) 635-200, Paragraph 14-3(c), with the narrative reason for separation noted as Unsuitability-apathy, defective attitude or inability to expand effort constructively, a separation code of JMJ, and reentry code of 'RE-3.' His DD Form 214 shows he received a Good Conduct Medal.

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 memorandum dated 28 August 1980 regarding the applicant's separation was reviewed. It noted that the applicant enlisted on 30 July 1976 for a term of 3 years and had 3 years of prior service. This is consistent with records in JLV indicating the applicant served in the military from 30 July 1976 through 12 September 1980; however, there was no DD Form 214 available for review showing the period of service prior to 1979. Regarding the basis for discharge, the memorandum also shows the commander noted that the applicant 'has exhibited a defective attitude and an inability to expend his effort effectively. Despite individual attention by his NCO's, formal counseling efforts, and nonjudicial punishment, [the applicant's] attitude has shown no improvement.' The memorandum shows he was counseled on numerous occasions in June 1980 for bad checks, failure to report, bankruptcy, and a traffic ticket and also notes his two previous Article 15s as summarized in the ROP.

e. Per review of JLV, the applicant is 60% service-connected through the VA, 50% for Impaired Hearing, 10% for Tinnitus, and 0% for Traumatic Brain Disease. He completed an Initial Evaluation of Residuals of Traumatic Brain Injury (I-TBI) Disability Benefits Questionnaire (DBQ) on 23 June 2022. The provider diagnosed the applicant

with TBI noting the date of diagnosis as 23 June 2022. The evaluator noted that there were no complaints of impairment of memory, attention, concentration or executive functions, judgment was noted as normal, social interaction was noted as routinely appropriate, orientation, motor activity and visual spatial orientation were noted to be within normal limits (WNL). His subjective symptoms were, in effect, determined to not interfere with activities of daily living or social, occupational functioning, though noted he had mild or occasional headaches and mild anxiety. There were no neurobehavioral effects noted, and communication and consciousness were documented as within normal limits. The provider opined that the applicant did have a TBI but it was less likely than not that this impacts his social or occupational functioning and there were not any residual symptoms. Furthermore, the provider noted that the applicant had a head injury documented during his military service [*Advisor's Note*: the date of injury was not specified], but that he did not report any difficulties with memory, irritability, or headaches outside of the context of cocaine use, which was ongoing at the time of the evaluation. A Medical Opine dated 01 November 2022 documented that it is 'more likely than not that the applicant has a diagnosis of TBI related to an in-service head trauma. However, it is unlikely that this diagnosis is causing residual symptoms. The described headaches and blackouts are better accounted for by ongoing cocaine use.'

f. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service to honorable. He indicated TBI is related to his request. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been service-connected through the VA for several medical conditions, to include Traumatic Brain Disease (0%). The evaluating provider determined that his diagnosis of TBI was not causing any residual symptoms and opined that the endorsed residuals were better accounted for by cocaine use. Head injuries that are constituted as mild TBI (mTBI), also known as concussion, are typically expected to resolve within a few weeks or up to a month, though may take longer in some cases (clevelandclinic.org, 2024). While the provider did not specify if the applicant's diagnosis of TBI was mild, given there are no reported residuals associated with the diagnosis, the trajectory of the condition is consistent with the expected course of mTBI, which is typically a full recovery. As the evaluating VA provider noted judgment as 'normal' during his examination and there was no interference with his ability to manage his activities of daily living (ADLs), there is no indication that his in-service head injury was of such severity that it would have interfered with the ability to distinguish between right and wrong and act in accordance with the right or manage his ADLs. Thus, regarding the applicant's Article 15 for writing bad checks and counseling for bankruptcy, BH mitigation would not be supported. It is acknowledged by this Advisor that the acute sequelae post-head injury may contribute to changes in mood and functioning, to include apathy, problems with attitude, failure to report, and problems with driving (e.g., traffic ticket). However, as there is insufficient information as to when the head injury occurred in relation to the applicant's discharge,

particularly as the VA examiner opined that he does not experience residuals associated with TBI, there is insufficient information available to establish a nexus between his in-service head injury and the misconduct that would otherwise be mitigated by TBI (e.g., apathy, problems with attitude, failure to report, and problems with driving (i.e., traffic ticket). As such, BH mitigation is unclear.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 0% service-connected for Traumatic Brain Disease through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 0% service-connected for Traumatic Brain Disease through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review. Post-discharge, the applicant has been diagnosed and 0% service-connected through the VA for Traumatic Brain Disease though the evaluating provider opined the applicant did not experience any residuals associated with this diagnosis that were attributable to TBI and were instead attributable to ongoing cocaine use. The natural sequelae following a head injury may include changes to mood and behavior, as related to the applicant's narrative reason for separation which was noted as 'apathy, defective attitude or inability to expand effort constructively.' However, there is no indication that the applicant's head injury was of such severity to interfere with the ability to distinguish between right and wrong and act in accordance with the right or the inability to manage his ADLs. As such, there would not be BH support pertaining to his misconduct of writing bad checks and bankruptcy. Although his history of in-service head injury that has since been diagnosed as TBI by the VA would otherwise provide the basis for BH mitigation for his misconduct of failure to report, going AWOL, apathy, defective attitude, and a traffic ticket, there is insufficient information in the record specifying the date of the injury in relation to the applicant's discharge. This is notable as the VA examiner determined that the applicant was not experiencing ongoing residuals associated with this diagnosis and therefore a temporal relationship between any acute symptoms that have since resolved and the reason(s) for discharge cannot be established. Thus, as there is insufficient information pertaining to the onset of the condition in relation to his discharge, there is insufficient information available to establish a nexus between his diagnosis of TBI and the reason(s) for discharge that would otherwise be mitigated by a diagnosis of TBI (e.g., apathy, problems with attitude, failure to report, and problems with driving (i.e., traffic ticket). As such, BH mitigation is unclear.

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 review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The Board noted and concurred with the medical advisor's review finding insufficient information as to when the head injury occurred in relation to the applicant's discharge. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

2. The Board found the applicant's service record exhibits numerous instances of unsatisfactory job performance and conduct. Evidence shows he failed to meet the standards required to be a productive member of the United States Army. The applicant accepted nonjudicial punishment on several occasions and was discharged for unsatisfactory performance. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable characterization of service. Therefore, the Board denied relief.

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.

6/10/2025

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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/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 based on equity, injustice, or clemency grounds, BCM/NRs 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.

5. Army Regulation 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

6. 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.

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//