

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240002493

APPLICANT REQUESTS:

- Upgrade his under other than honorable conditions discharge
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 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, in effect, he was a "hot head" between the ages of 17 and 20, and he wishes he had thought things out better back then; nonetheless, he is proud to have served his country. He is now in his 60s, and he has become a better and stronger man as a result of his military experiences. With this upgrade, he hopes to gain access to Department of Veterans Affairs (VA) health benefits.
3. The applicant did not provide any supporting documentation regarding his "other mental health" issues.
4. A review of the applicant's service record shows the following:
 - a. On 19 October 1979, the applicant enlisted into the Regular Army for 3 years; he was 18 years old. Upon completion of initial entry training and the award of military occupational specialty 12B (Combat Engineer), orders transferred him to Germany, and he arrived at his new unit (Company A within an engineer battalion), on 12 February 1980. Effective 19 April 1980, his chain of command promoted him to private (PV2)/E-2.

b. On or about 2 December 1980, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for two specifications of failing to report to his appointed place of duty at the time prescribed. The imposing commander's punishment included a suspended reduction in rank to private (PV1)/E-1. On 13 February 1981, the imposing commander vacated the suspended reduction. On or about 13 February 1981, the applicant accepted NJP for two specifications of disobeying a sergeant's order and three specifications of failing to report to his place of duty at the time prescribed.

c. On 9 March 1981, the applicant's company commander initiated separation action against him, per paragraph 5-31 (Expeditious Discharge Program (EDP)), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). An undated note on the commander's separation recommendation states the recommendation was disapproved, per discussion with the applicant; instead, the applicant was to be transferred to D Company.

d. On 20 March 1981, the applicant transferred to Company D within the same battalion. In June 1981, he accepted NJP for possession of marijuana. On 5 February 1982, the applicant's company commander initiated bar to reenlistment action against him, citing his previous NJP actions. The commander added, "The reasons for my proposed actions are (as follows): due to your recurrent record of misconduct, substandard personal appearance and hygiene, (and) failure to adapt to basic military life. Your lack of self-discipline and poor attitude indicate that you are apathetic towards being a productive Soldier in the U.S. Army." On 1 March 1982, the battalion commander approved the bar to reenlistment.

e. On 5 March 1982, an Army psychiatric nurse/clinical specialist provided a psychiatric evaluation of the applicant and cleared the applicant for any administrative action deemed appropriate by the command.

(1) Under diagnosis, the report stated, "No Mental Disorder."

(2) In "Mental Status," the report showed, "No evidence of significant thought disorder. No evidence of significant affective disorder. History suggests social misconduct of a non-violent nature. SM (service member) reports not interested in therapy or re-training or retention in the service."

(3) Findings and Conclusions: "SM reports he was told, 'Jail or Army,' and (he) chose the Army. He notes considerable awareness of apathy and inattention and is apathetic even to those issues. I do not feel he has retention potential."

f. On 6 April 1982, the applicant's commander advised him, via memorandum, that he was initiating separation action against the applicant, under the provisions of

paragraph 14-33 (Other Acts or Patterns of Misconduct – Other Misconduct – Acts of Misconduct), AR 635-200. The commander indicated his reasons were based on the applicant's alcohol or other drug offenses and an established pattern of shirking.

g. On 9 April 1982, after consulting with counsel, the applicant acknowledged his counsel had advised him of the basis for his pending separation action and had informed him of his rights and the effect of waiving those rights. The applicant elected to waive consideration by and a personal appearance before a board of officers, and he opted not to submit statements in his own behalf.

h. On 12 April 1982, the applicant accepted NJP for wrongful use and possession of marijuana in hashish form.

i. On 14 April 1982, the commander filed his separation recommendation for misconduct.

(1) Under "Duty Assignments and Rehabilitative Efforts," the commander wrote:

(a) "Service member was assigned to A Company, [engineer battalion], on 12 February 1980 as a combat engineer. Numerous counselings and other administrative actions were employed in an effort to correct his attitude and job performance."

(b) "On 20 March 1981, SM was transferred under rehabilitative conditions to D Company, [engineer battalion]. Once again, several counselings as well as administrative actions were employed, however none seemed to have any positive effect on [applicant]."

(c) "(Applicant) was enrolled into the CDAAC (Community Drug and Alcohol Assistance Center) Program, on 24 July 1981, so that he could begin to cope with his drug and alcohol problem. This, along with non-punitive and non-judicial actions, (have) proven to be unsuccessful in molding [applicant] into a productive Soldier."

(2) For "Synopsis of Soldier's Conduct," the commander stated:

(a) After his assignment to Company A, the applicant "continually refused to carry out orders from his superiors, as well as be at his appointed place of duty at the prescribed time. In addition, he had several incidents of disorderly conduct. Counselings (and) non-punitive and non-judicial actions were all employed but all were unsuccessful."

(b) "In March 1981, SM was offered a Chapter 5 (Separation for Convenience of the Government) Discharge (apparently referring to the proposed EDP) which he chose

to accept. Later that month, he was transferred under rehabilitative conditions to D Company, [engineer battalion]."

(c) "His tour with D Company has been scarred by several drug offenses as well as numerous incidents of absent from place of duty. Once again, all administrative and non-judicial actions have been ineffective. SM's retention in the U.S. Army would cause further unnecessary hardship on his fellow Soldiers and his supervisors and could result in severe disciplinary action being imposed on him."

j. On 12 May 1982, the separation authority approved the commander's separation recommendation and directed the applicant's under other than honorable conditions discharge. On 25 May 1982, orders separated the applicant accordingly. His DD Form 214 shows he completed 2 year, 7 months, and 7 days of his 3-year enlistment contract. The report additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon, and two marksmanship qualification badges.

(2) Special Additional Information:

- Item 25 (Separation Authority) – paragraph 14-33a (2) (Acts of Misconduct – Alcohol or Other Drug Offense(s)), AR 635-200
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JKK"
- Item 27 (Reenlistment (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Misconduct – Alcohol or Other Drug Offense(s)"

5. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. Due to the applicant checking the box on his application for "other mental health" issues, this case is being referred to the mental health staff at the Army Review Boards Agency.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected OMH on his application as related to his request but provides no rationale or indication of a BH condition or diagnosis.

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 into the Regular Army on 19 October 1979.
- On or about 2 December 1980, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for two specifications of failing to report to his appointed place of duty at the time prescribed. The imposing commander's punishment included a suspended reduction in rank to private (PV1)/E-1. On 13 February 1981, the imposing commander vacated the suspended reduction. On or about 13 February 1981, the applicant accepted NJP for two specifications of disobeying a sergeant's order and three specifications of failing to report to his place of duty at the time prescribed.
- On 20 March 1981, the applicant transferred to Company D within the same battalion. In June 1981, he accepted NJP for possession of marijuana. On 5 February 1982, the applicant's company commander initiated bar to reenlistment action against him, citing his previous NJP actions. The commander added, "The reasons for my proposed actions are (as follows): due to your recurrent record of misconduct, substandard personal appearance and hygiene, (and) failure to adapt to basic military life. Your lack of self-discipline and poor attitude indicate that you are apathetic towards being a productive Soldier in the U.S. Army." On 1 March 1982, the battalion commander approved the bar to reenlistment.
- On 6 April 1982, the applicant's commander advised him, via memorandum, that he was initiating separation action against the applicant, under the provisions of paragraph 14-33 (Other Acts or Patterns of Misconduct – Other Misconduct – Acts of Misconduct), AR 635-200. The commander indicated his reasons were based on the applicant's alcohol or other drug offenses and an established pattern of shirking.
- On 12 April 1982, the applicant accepted NJP for wrongful use and possession of marijuana in hashish form.
- Applicant was discharged on 25 May 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, paragraph 14-33a (2) (Acts of Misconduct – Alcohol or Other Drug Offense(s) and his service was characterized as under other than honorable conditions, with separation code JKK and Reentry code 3.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "was a 'hot head' between the ages of 17 and 20, and he wishes he had thought things out better back then; nonetheless, he is proud to have served his country. He is now in his 60s, and he has become a better and

stronger man as a result of his military experiences. With this upgrade, he hopes to gain access to Department of Veterans Affairs (VA) health benefits."

d. Due to the period of service, no active-duty electronic medical records were available for review. A psychiatric evaluation dated 5 March 1982, shows the applicant evidenced no mental disorder and he reported no interest in therapy, re-training, or retention in the service. The clinician indicates, "he notes considerable awareness of apathy and inattention and is apathetic even to those issues. I do not feel he has retention potential." The applicant was cleared for any administrative action deemed appropriate by the command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, and he did not submit any medical documentation post-military service substantiating his assertion of OMH.

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 could potentially mitigate his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH 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 or after his discharge.

(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, the VA has not service-connected the applicant for any BH condition, and there are no VA electronic records indicating he has been treated for any mental health condition. And while the applicant selected OMH on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, his statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and the character of service he received upon discharge. The Board considered the review and conclusions of the medical advisor. The Board found: (1) The applicant selected OMH on his application as related to his request; (2) There is no medical or other documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge; (3) There is insufficient evidence of any mitigating BH condition that would overcome the applicant's misconduct and warrant an upgrade as a matter of liberal consideration. The applicant provided no evidence of post-service achievements or reference letters in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's character of service 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.

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, 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 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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-13a (Honorable Discharge). An honorable discharge was considered a separation with honor.

(1) Issuance of an honorable discharge certificate was predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

(2) Where a member had served faithfully and performed to the best of his ability and there was no derogatory information in his military record, he was to be furnished an honorable discharge certificate. Where there had been infractions of discipline, the extent thereof was to be considered, as well as the seriousness of the offense(s).

(3) A member should not necessarily be denied an honorable discharge solely by reason of a specific number of convictions by courts-martial or actions under Article 15 of the UCMJ. Conviction by a general court-martial or by more than one special court-martial did not automatically rule out the possibility of awarding an honorable discharge. It was pattern of behavior and not the isolated instance that should be considered the governing factor in determination of character of service. When there was doubt as to whether an honorable or general discharge should be furnished, the doubt was to be resolved in favor of the member.

b. Paragraph 1-13b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), Paragraph 5-3 (Authority). The separation of enlisted personnel was the prerogative of the Secretary of the Army. The discharge of any enlisted member of the Army for the convenience of the government was to be at the Secretary's discretion, with the issuance of an honorable or a general discharge certificate, as determined by the Secretary.

d. Paragraph 14-33 (Other Misconduct). Commanders identified Soldiers for discharge when they displayed a pattern of misconduct; this included Soldiers who had possessed or used controlled substances or abused alcohol. Additionally, Soldiers who displayed an established pattern of shirking could be separated under this paragraph. Separation authorities typically issued Soldiers an under other than honorable conditions character of service for separations under this provision.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the

appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-280 (Army Reenlistment Program).

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-33a (2), AR 635-200 were to receive an SPD of "JKK" and have, "Misconduct – Alcohol or Other Drug Offense(s)" entered in item 28 of their DD Form 214.

6. AR 601-280, in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Paragraph 2-23a (5) (Persons Ineligible for Immediate Reenlistment) stated persons separated under chapter 14, AR 635-200 required a waiver to reenter the Army.

b. Appendix D (Reenlistment Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

7. 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 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.

8. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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 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 misconduct that led to the discharge.

9. 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, 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.

10. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//