

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240002638

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 was discharged because of supposed patterns of misconduct. There was never any proof of misconduct that was presented. He had a knee surgery that was service related and could not perform some of his duties because of it. His commanding officer formed judgement against him and could not even believe that he was in his unit. He looked for any way that he could to get the applicant out of what he called "HIS" Army. This action has made him very leery of every employer he has had since.
3. The applicant enlisted in the Regular Army on 14 May 1997.
4. On 26 August 1998, he received a General Officer Memorandum of Reprimand (GOMOR), for driving a motor vehicle when his blood alcohol content was .118% on 14 June 1998. The reprimand stated:
 - a. Driving under the influence of alcohol or other drugs is a serious matter that kills and injures thousands of Americans each year. His gross disregard for the safe operation of a motor vehicle endangered his life and the lives and property of others.
 - b. This reprimand is imposed as an administrative measure under the provisions of Army Regulation (AR) 600-37 (Unfavorable Information) and not as punishment under

Article 15, Uniform Code of Military Justice. Its purpose is to censure him for his unacceptable conduct and to advise him that similar future actions will not be tolerated. He must not construe his decision to use an administrative measure to indicate that he does not consider his behavior to be most serious. On the contrary, this matter is of such seriousness that he considered filing this memorandum of reprimand in his Official Military Personnel File (OMPF).

- c. The applicant acknowledged receipt on 3 September 1998. He elected not to submit matter on his own behalf.
- d. His chain of command recommended that the filing be placed in his OMPF.
5. On 14 September 1998, his commander notified him of his intent to separate him under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12b, for patterns of misconduct. The commander listed the following reasons for the proposed action: On 27 July 1998, he received a Field Grade Article 15 for drunken driving. On 15 July 1998, he received a Company Grade Article 15 for failing to be at his appointed place of duty and absenting himself from his unit. In addition to this he had been counseled on failing to pay debts and failing to pay attention to details. The applicant acknowledged receipt the same day.
6. On 14 September 1998, he was advised by his counsel of the basis for the contemplated action to separate him for misconduct under chapter 14, of AR 635-200, and its effect; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood he may expect to encounter substantial prejudice in civilian life if a discharge/character of service any less favorable than honorable is issued to him.
7. His chain of command recommended that he be separated prior to the expiration of his current term of service for patterns of misconduct and recommended his character of service be general, under honorable conditions.
8. On 21 September 1998, the separation authority directed he be separated prior to the expiration of his current term of service, under the provisions of AR 635-200, chapter 14, paragraph 14-12b, patterns of misconduct. He further directed his service be characterized as general, under honorable conditions.
9. On 2 October 1998, the determination was made to file his GOMOR permanently in his OMPF.
10. Accordingly, he was discharged under honorable conditions on 8 October 1998. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 4 months, and 25 days net active service during this period. His

DD Form 214 also shows:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12b
- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Misconduct

11. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct.

12. 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.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his (general) under honorable conditions discharge. He asserts 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 on 14 May 1997; 2) On 14 September 1998, the applicant was notified by his commander of his intent to separate him under the provisions of AR 635-200, chapter 14, paragraph 14-12b, for patterns of misconduct. The commander listed the following reasons for the proposed action: On 27 July 1998, he received a Field Grade Article 15 for drunken driving. On 15 July 1998, he received a Company Grade Article 15 for failing to be at his appointed place of duty and absenting himself from his unit. In addition to this he had been counseled on failing to pay debts and failing to pay attention to details; 3) The applicant was discharged on 8 October 1998, chapter 14, paragraph 14-12b, patterns of misconduct. His service was characterized as general, under honorable conditions.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD, while on active service.

- d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability for a mental health condition.
- e. Based on the available information, it is the opinion of the Agency Medical Advisor there is insufficient evidence to support 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 misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.
- (2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.
- (3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in various forms of misconduct, which could be seen as avoidant or erratic behavior and a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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 statement and contentions, his military record, the frequency and nature of his misconduct, the GOMOR and NJP in his records, the reason for his separation and the character of service he received upon separation. The Board found evidence of a pattern of misconduct in the records. The Board considered his statement regarding PTSD and the review and conclusions of the medical advisor. The Board found: (1) The applicant asserts that he experienced PTSD that mitigates his misconduct; (2) That he experienced PTSD while on active duty; (3) There is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service and that there is insufficient evidence of mitigation for the

misconduct to warrant an upgrade of his discharge as a matter of liberal consideration. The applicant did not provide evidence of post-service achievements or reference letters for the Board to consider in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service he 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.

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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states 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.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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 14-12b, with a narrative reason of misconduct, would receive SPD code "JKA."

4. 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.

5. 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.

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.

//NOTHING FOLLOWS//