

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240002659

APPLICANT REQUESTS: on behalf of her deceased husband, a servicemember, upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record), 17 January 2024
- Department of Veterans Affairs (VA) Rating Decision, 22 March 2022
- VA letter, establishing Next of Kin Status

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, on behalf of the servicemember, a factor of his general discharge is related to the VA medical opinion conducted on 14 March 2022. This positively links his mental health and secondary alcohol use disorder as at least as likely as not, proximate to his service connected Tinea Versicolor. The medical opinion is consistent with the evidence of record that his alcohol use disorder was likely a method of coping with the itching, sleep disturbance, and disfigurement caused by his Tinea Versicolor.
3. The applicant provides a VA Rating Decision, dated 22 March 2022, reflecting service connection for the cause of death was granted. Page 3 of the VA Rating Decision, reflects the Veteran was granted service connected disability benefits for tinea versicolor. The death certificate recorded the Veteran's cause of death as hyperglycemia, cardiac arrest, type II diabetes, hypertension, end stage renal disease, peripheral artery disease, neuropathy, and cirrhosis. This VA disability grant was made on appeal at the Board of Veterans Appeals of an earlier VA application for Veterans disability benefits.
4. A review of the servicemember's records show the following:

a. On 2 May 1972, he enlisted in the Regular Army for 3 years. He attained the rank of private first class on 15 September 1972.

b. Orders issued to him on 20 August 1973, reflect he was attached to 5th Battalion, 68th Armor, Germany, effective 8 August 1973.

c. On 21 September 1973, he accepted nonjudicial punishment (NJP) for failing to obey a lawful order from his sergeant first class on 20 September 1973 and on 21 September 1973, by failing to support Bravo Company on the range. He received a reduction, some forfeiture of pay, and extra duty.

d. On 6 November 1973, he was issued a bar to reenlistment. The reason for the bar was he refused to work in his assigned military occupational specialty (MOS) within the brigade; he expressed no intention of performing duties of a battalion medic.

c. Special Court-Martial Orders dated 14 December 1973, show he was arraigned, tried, plead guilty, and was found guilty of striking his superior noncommissioned officer in the leg with a book and using disrespectful language towards his superior noncommissioned officer. He was sentenced to reduction to private/E-1, forfeiture of some pay for 2 months, and hard labor for 2 weeks.

d. On 25 January 1974, his commanding officer notified him of his intent to initiate discharge action against him under provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, under the Expeditious Discharge Program (EDP); and advised him of his rights. The reason for this action was he received one NJP and one special court-martial, refused to work in his primary MOS, and was a disruption in his unit. His commanding officer advised him he was recommending a under honorable conditions (general) discharge.

e. On the same date, he elected his rights, voluntarily accepted discharge from the Army, and he waived submission of a statement in his own behalf. He understood if he received a general discharge, he may expect to encounter substantial prejudice in civilian life and acknowledged he had been provided the opportunity to consult with the Judge Advocate Officer.

f. His intermediate commanders recommended approval of his EDP discharge with an under honorable conditions (general) discharge.

g. On 11 February 1974, the separation authority approved his discharge.

h. On 21 February 1974, he was discharged. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under provisions of Army

Regulation 635-200 with a characterization of service of under honorable conditions (general). He completed 1 year, 9 months, and 13 days of net active service this period.

5. There is no evidence the servicemember applied to the Army Discharge Review Board within that Board's 15-year statute.

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

7. MEDICAL REVIEW:

a. The applicant, the spouse of the deceased former service member (FSM), is applying to the ABCMR requesting an upgrade of the FSM's under honorable conditions (general) discharge. She contends the FSM experienced mental health conditions that mitigate his misconduct and warrant a change to his discharge. 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 FSM enlisted in the Regular Army on 2 May 1972; 2) On 21 September 1973, the FSM accepted nonjudicial punishment for failing to obey a lawful order from his sergeant first class and by failing to support Bravo Company on the range; 3) On 6 November 1973, the FSM was issued a bar to reenlistment. The reason for the bar was the FSM refused to work in his assigned MOS as a medic within the brigade; 4) Special Court-Martial Orders, dated 14 December 1973, show the FSM was found guilty of striking his NCO in the leg with a book and using disrespectful language towards his NCO; 5) The FSM was discharged on 21 February 1974, Chapter 13, under the Expeditious Discharge Program (EDP). His service was characterized as under honorable conditions (general). He completed 1 year, 9 months, and 13 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the FSM's available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

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

d. A review of JLV provided insufficient evidence the FSM had been diagnosed with a service-connected mental health condition, and he did 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 that there is insufficient evidence to support the FSM 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 the FSM experienced a mental health condition, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced a mental health condition that mitigates his misconduct, while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition, while he was on active service. The applicant did engage in avoidant and erratic behavior, which could be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the FSM's reported mental health condition and his assault of his NCO in that 1) this type of misconduct is not a part of the natural history or sequelae of the FSM's reported mental health conditions; 2) the FSM's reported mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends the FSM was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration the contention is sufficient for the board's consideration.

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, medical advisor's review, 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.

2. The Board found the applicant's service record failed to meet the standards required to be a productive member of the United States Army. The FSM accepted two nonjudicial punishments on several occasions, a conviction at a special court-martial, and was discharged for EDP. The applicant provided no evidence of the FSM's post-service achievements. The Board noted and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on a preponderance of evidence, the Board determined that the characterization of service the FSM received upon

separation was not in error or unjust. The Board agreed that the FSM'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.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced a mental health condition, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced a mental health condition that mitigates his misconduct, while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition, while he was on active service. The applicant did engage in avoidant and erratic behavior, which could be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the FSM's reported mental health condition and his assault of his NCO in that 1) this type of misconduct is not a part of the natural history or sequelae of the FSM's reported mental health conditions; 2) the FSM's reported mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends the FSM was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration the contention is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the FSM's characterization of service.

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, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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 provides for separating enlisted members under the expeditious discharge program (EDP). This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated when they have failed to respond to counseling (DA Form 4856, General Counseling Form). The criteria in section VIII, chapter 1, will govern whether the member will be released from active duty with transfer to the IRR, or be discharged. A discharge general, under honorable conditions is normally appropriate for a Soldier discharged under this chapter.

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

c. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

3. 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/NR), on 25 July 2018, 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 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 grounds.

4. Section 1556 of Title 10, U.S. 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//