

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240002867

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general), and an appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record), 4 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, he received an honorable discharge from the National Guard when he transferred to active duty. He received numerous awards and accolades to include having two military occupational specialties (MOS) and receiving the Top Dog Award for the most guard duty hours performed. His discharge was because he was under duress from his divorce. His wife was having a relationship with a higher noncommissioned officer, which was brushed aside. He states he was not a perfect Soldier, but no Soldier is. However, he loved the Army and his country.
3. On his DD Form 149, he indicates post-traumatic stress disorder (PTSD) is related to his request.
4. The applicant enlisted in the Army National Guard on 24 October 1994. He entered a period of active duty service on 28 June 1995 for initial active duty for training (IADT). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active-duty training under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 4 (Separation for Expiration of Service Obligation), due to completing his required active service on 7 October 1995. He served a total of 3 months and 10 days of net active service this period.

5. He was honorably discharged from the Army National Guard [REDACTED] on 11 March 1996 for enlistment in the active component. His National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he served 1 year, 4 months, and 18 days of net service for this period.

6. The applicant enlisted in the Regular Army on 12 March 1996 for a 3-year period. He was awarded MOS 13M (Multiple Launch Rocket System Crewmember). The highest rank he attained was private/E-2.

7. The applicant received numerous informal counseling sessions from 3 July 1996 to 11 November 1996. The areas of emphasis covered in the counseling include, but are not limited to:

- personal appearance not meeting the standards
- failing to make formation(s)
- writing a bad check of \$44.01
- letter of indebtedness
- refusing to help other Soldiers
- sleeping on guard duty
- lack of motivation on a battery run
- failure to repair
- failing the Army Physical Fitness Test
- violating a restriction order

8. On 1 November 1976, he received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for stealing two cans of Copenhagen, property of the Army and Air Force Exchange Service, on or about 16 October 1996. His punishment was reduction to the grade of E-1, forfeiture of \$437.00 pay for one month, 45 days of extra duty, and 45 days of restriction.

9. On 3 January 1997, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct. The commander noted the specific reason as the applicant's several acts of misconduct, which included failing to be at his appointed place of duty, failing to maintain sufficient funds, larceny, breaking restriction, and sleeping on guard duty.

10. The applicant acknowledged receipt of the notification for separation and consulted with counsel on 6 January 1997. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He understood he may encounter prejudice in civilian life if he received a discharge less than honorable and he elected to not submit a statement in his own behalf.

11. On 8 January 1997, the applicant's immediate commander formally recommended him for separation under the provisions of AR 635-200, paragraph 14-12b, patterns of misconduct.

12. On 13 January 1997, the applicant's intermediate commander recommended approval of the requested separation. Further recommending the applicant receive an under honorable conditions (general) discharge.

13. The separation authority approved the applicant's separation due to patterns of misconduct on 30 January 1997. He further directed the applicant be issued an under honorable conditions (general) discharge.

14. The applicant was discharged on 7 February 1997, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct, in the grade of E-1. His DD Form 214 shows his service was characterized as under honorable conditions (general). He was credited with 1 year, 2 months, and 6 days of net active service.

15. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

16. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under honorable conditions (general) to honorable. He contends PTSD mitigates his discharge.

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:

- With prior service, the applicant enlisted into the Regular Army on 12 March 1996.
- Applicant received numerous informal counseling sessions from 3 July 1996 to 11 November 1996. The areas of emphasis covered in the counseling include, but are not limited to:
 - personal appearance not meeting the standards
 - failing to make formation(s)
 - writing a bad check of \$44.01

- letter of indebtedness
- refusing to help other Soldiers
- sleeping on guard duty
- lack of motivation on a battery run
- failure to repair
- failing the Army Physical Fitness Test
- violating a restriction order
- On 1 November 1976, he received nonjudicial punishment under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for stealing two cans of Copenhagen, property of the Army and Air Force Exchange Service, on or about 16 October 1996. His punishment imposed was reduction to the grade of E-1, forfeiture of \$437.00 pay for one month, 45 days of extra duty, and 45 days of restriction.
- On 3 January 1997, the applicant's immediate commander notified the applicant of the intent to recommend him for separation under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct. The commander noted the specific reason as the applicant's several acts of misconduct which included failing to be at his appointed place of duty, failing to maintain sufficient funds, larceny, breaking restriction, and sleeping on guard duty.
- Applicant was discharged on 7 February 1997, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct, in the grade of E-1. His DD Form 214 shows his service was characterized as under honorable conditions (general) with separation code JKA 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 received an honorable discharge from the National Guard when he transferred to active duty. He received numerous awards and accolades to include having two military occupational specialties (MOS) and receiving the Top Dog Award for the most guard duty hours performed. His discharge was because he was under duress from his divorce, his wife was having a relationship with a higher noncommissioned officer, and the relationship was brushed aside. He states he was not a perfect Soldier, but no Soldier is, however, he loved the Army and his country.

d. Due to the period of service, no active-duty electronic medical records were available for review. No medical documentation was submitted by the applicant for review.

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, the

applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD.

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 mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(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 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 is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition. In addition, the applicant appears to imply his assertion of PTSD is based on his wife having an extramarital affair while he was in service, although he might have experienced such an issue as stressful, it is not an index trauma that meets diagnostic criteria for PTSD.

h. Per Liberal Consideration guidelines, his contention of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and

concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

3/29/2025

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CHAIRPERSON

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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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of IADT. He was awarded a military occupational specialty at the completion of training and was transferred back to the Army National Guard ■. Army Regulation 635-200 provides that when a National Guard

component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 7 October 1995 showing his character of service as honorable.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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, 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.

//NOTHING FOLLOWS//