

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 October 2024

DOCKET NUMBER: AR20240002882

APPLICANT REQUESTS:

- upgrade of his general, under honorable conditions discharge to honorable
- change the narrative reason for separation
- change the separation code
- change the reentry eligibility code

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

DD Form 149 (Application for Correction of Military Record), 11 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 indicates on his application post-traumatic stress disorder (PTSD) was an issue or condition related to his request. He states he was ordered to complete a physical training test while he was being treated for chronic migraines. He was physically unable to perform.
3. A review of the applicant's service records shows:
 - a. On 8 October 1985, he enlisted in the Regular Army for 3 years. Following training, he was awarded military occupational specialty 94B (Food Service Specialist).
 - b. On 31 March 1988, he reenlisted for 5 years beginning at grade/pay grade specialist 4 (SP4)/E-4.
 - c. On 20 December 1988, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to register his civilian weapon on post on 24 November 1988, at Fort Riley; and

for wrongfully carrying a concealed weapon on 24 November 1988, at Fort Riley. His punishment consisted of reduction to private first class (PFC)/E-3, suspended for 90 days; and 14 days of extra duty. He did not appeal this punishment.

d. On 1 September 1990, he accepted field grade NJP under the provisions of Article 15 of the UCMJ for failing to go to appointed place of duty on 6 July 1990 and on 10 July 1990; and for unreasonably causing or permitting his six children to be placed in a situation of endangerment, in violation of Kansas statutes. His punishment consisted of reduction to private (PVT)/E-1, forfeiture of \$362.00 pay per month for 2 months, and extra duty with restriction for 45 days. On 5 September 1990, he appealed this punishment. On 29 November 1990, his commander granted the portion of his punishment consisting of forfeiture of \$362.00 pay per month for 2 months by suspending it for 2 months.

e. On 27 March 1991, he accepted field grade NJP under the provisions of Article 15 of the UCMJ for absenting himself from his appointed place of duty (AWOL) from 13 February 1991 to 5 March 1991. His punishment consisted of forfeiture of \$250.00 pay per month for 2 months, suspended for 2 months; and extra duty with restriction for 45 days.

f. On 4 February 1992, he was counseled for Army Physical Fitness Test (APFT) failure, and he was placed on supplemental physical training. A flag was imposed against him.

g. On 26 February 1992, his first sergeant counseled him for volunteering to take the APFT before the required 90 day window requirement and notified him it would be for record; and that failure would result in chapter out processing.

h. On 4 March 1992, he was counseled for APFT failure in January and February 1992, due to not passing the 2 mile run.

i. On 9 March 1992, he requested an APFT. His training noncommissioned officer (NCO) notified him that it would be for record and that if he should fail the APFT, he could be referred for chapter proceedings.

j. On the same date, he was notified to report to the troop medical clinic to start chapter proceedings.

k. His records contain 54 pages of medical treatment and progress notes, which show he reported a history of headaches and or received treatment:

- 4 March 1992, headaches and dizziness
- 6 March 1992, headaches and dizziness

- 10 March 1992, headaches persisted for more than 5 days with a request for a profile for physical training
- 16 March 1992, follow-up for headaches
- 20 March 1992, in which he requested a profile for headaches after reporting pain increases with running and sit-ups

l. On an unspecified date, his company commander notified him he was recommending his separation from the Army under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13-2a, for APFT failure and notified him of his rights. He recommended an honorable characterization of service. He further notified him that the separation authority was not bound by his recommendation as to the characterization of service he could receive and the separation authority may direct an honorable or general, under honorable conditions character of service. He understood he may consult with consulting counsel, he may submit written statements in his own behalf, he may obtain copies of the documents that would be sent to the separation authority, and he may request a hearing before an administrative separation board as he had completed 6 or more years of service, or he may submit a conditional waiver of having his case heard before an administrative separation board.

m. On an unspecified date, his company commander recommended his separation for unsatisfactory performance as the result of APFT failure and unsatisfactory performance. In this recommendation, his commander noted he received NJP for failure to report two times, child endangerment, and AWOL for a total of 52 days.

n. On 31 March 1992, he met with counsel, and he elected his rights. In submitting a conditional waiver of his rights contingent upon receiving a characterization of service no less than honorable, he waived submission of statements in his own behalf, he waived appearance before an administrative separation board, and he waived an appearance before such a board. If the separation authority refused to accept his conditional waiver, he requested a personal appearance before an administrative separation board, and he requested consulting counsel and representation by counsel.

o. On an unspecified date, his battalion commander disapproved his conditional waiver of an administrative separation board and directed such a board be convened to determine if he should be separated.

p. On 30 July 1992, he was notified that an administrative separation board would be conducted on 18 August 1992, and he was advised of his rights pursuant to such a board.

q. On 24 August 1992, an administrative separation board met and found his performance of duty was not satisfactory; he had failed an APFT test on two straight

occasions, he had not provided evidence to show that he was medically unfit to take the APFT test, and he was not on a physical training profile. The board recommended that he be discharged for unsatisfactory performance with a general, under honorable conditions character of service.

r. On the same date, the separation authority approved the findings and recommendations of the administrative separation board and directed his discharge with a characterization of service as general, under honorable conditions.

s. On 2 September 1992, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 13 by reason of unsatisfactory performance. He completed 6 years, 9 months, and 5 days of net active service this period with 52 days' time lost 9 April 1986—8 May 1986 and 13 February 1991—4 March 1991. It further shows in:

(1) block 24 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, National Defense Service Medal, NCO Professional Development Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M16);

(2) block 24 (Character of Service) – General, Under Honorable Conditions;

(3) block 26 (Separation Code) – JHJ; and

(4) block 27 (Reentry Code) – 3.

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he experienced PTSD that mitigates 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 applicant enlisted in the Regular Army on 8 October 1985; 2) On 24 August 1992, an administrative separation board met and found his performance of duty was not satisfactory; he had failed an APFT test on two straight occasions, he had

not provided evidence to show that he was medically unfit to take the APFT test, and he was not on a physical training profile. The board recommended that he be discharged for unsatisfactory performance with a general, under honorable conditions character of service; 3) The applicant was discharged on 2 September 1992, Chapter 13 by reason of unsatisfactory performance. His service was characterized as General, Under Honorable Conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical 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 service-connected 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 Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his discharge.

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 reported experiencing a migraine on during his last APFT failure. There is no nexus between this event and PTSD. 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:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence of record shows the applicant's performance was unsatisfactory as evidenced by his frequent NJPs and APFT failures. As a result, his chain of command initiated separation action against him for unsatisfactory performance and he was separated with a general, under honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative reason for separation and associated codes: Deny. The Board noted that the narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of Chapter 13, AR 635-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Unsatisfactory Performance," the separation code is "JHJ", and the reentry code is "RE 3". AR 635-5, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. There is no provision for any other reason to be entered under this regulation. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or associated codes. In view of the foregoing, the Board determined that the reason for discharge and associated codes were both proper and equitable and there is no reason to change it.

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, set policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Paragraph 3-7a provided that an honorable characterization of service was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b provided that a general (under honorable conditions) characterization of service was warranted when significant negative aspects of the Soldier's conduct or performance of duty outweighed positive aspects of the Soldier's military record.

c. Chapter 13 provided that a member may be separated under this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

(1) Commanders will initiate separation when it is clearly established that the member will not develop sufficiently to participate satisfactorily in further training and or become a satisfactory Soldier; the seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale; it is likely that the member will be a disruptive influence in present or future duty assignments; it is likely that the circumstances forming the basis for initiation of separation proceedings will continue to recur; and the ability of the member to perform duties effectively in the future, including potential for advancement or leadership is unlikely.

(2) Service members separated because of unsatisfactory service will be characterized as honorable or under honorable conditions as warranted by the military record.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, implemented Department of Defense policy for standardization of certain entries on DD Form 214 for SPD codes to be used and the authorities and reasons for their usage and control. The SPD JHJ corresponded to the narrative reason unsatisfactory performance, and the authority Army Regulation 635-200, chapter 13.

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met

- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. 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. 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. 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.

8. 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//