

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003175

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to an honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release of Discharge and Active Duty)
- Principal Deputy Under Secretary of Defense Memorandum
- Office of the Under Secretary of Defense Memorandum
- Under Secretary of Defense Memorandum
- ABCMR- Congressional and Special Actions Letter
- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States), 18 December 1986
- Extract-Department of the Army Historical Summary: FY 1986
- DA Form 2496 (Disposition Form)
- DD Form 458 (Charge Sheet)
- Criminal Investigation Lab Report
- Army Discharge Review Board (ADRB) Letter
- ADRB Part VI -Issues and Findings
- Department of Veterans Affairs (VA) Letter
- DA Form 3946 (Military Police Traffic Accident Report)
- Extract Article: Know the Danger Signs and Act Quickly
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- DD Form 1920 (Alcohol influence Report)
- DA Form 2823 (Sworn Statement)
- Three (3) Handwritten Statements
- DD Form 293, 10 March 1988
- Extract Article: Veterans in the Criminal Justice System
- Separation Authority Approval
- Medical Examination for Separation statement of option
- DA Fact Sheet Article 15 Information
- Court-Martial Charges
- Sobriety Determination

- Two-DA Form 4187 (Personnel Action)
- FG Form 6552 (Student Training/Action Report (STAR))
- Combat Electronic Warfare & Intelligence Certificate
- Two-Letter of Appreciation, 22 October 1982
- 11-Character Reference Letter
- Extract: Nonjudicial Punishment Procedure
- Permanent Orders 80-5
- Self-Authored Statement, 22 July 24
- VA Decision Letter, PTSD
- Initial PTSD Questionnaire

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20070011996 on 5 February 2008.

2. The applicant states his discharge was done for the convenience of the Army, because it was overcrowded. His promotions were placed on hold for the same reason. The driving while intoxicated (DWI) test should not have been given after he was allowed to go home and drink for about two hours before the military police (MPs) came and tested him following the accident. He did not receive a ticket or alcohol test from the German police, as falsely stated in his file. The ticket was given to the German driver.

a. The DWI should not have been allowed to be used to create a special court martial. After which, false allegation took on a new meaning as they were stacked on the same day of the report. He stated he was very irritable and may have come across disrespectful due to his post-traumatic stress disorder (PTSD), which was not diagnosed at the time (but has been since). While he was in the military, after two (2) head-on collision car accidents, one in 1983 and the other in 1985. There was never any mental help offered or ever mentioned during his time in the Army from 1982-1986. He also requested a medical examination during his release, but the Army denied it. Most likely due to the Army's budget. He states, maybe if he had been granted the medical examination that he was entitled, his PTSD would have been discovered and diagnosed. It was an error and an injustice not to allow him to be properly evaluated. Any alleged misconduct was due to him being irritable for not being properly promoted and feeling that the whole world was against him. He was harassed and retaliated against for seeking promotions that he deserved.

b. It was clearly an injustice to create these false allegation and errors. He states he should have been given an opportunity to receive an article 15, since he had never had any previous disciplinary actions. This was an error and an injustice. His previous three plus years of service were exemplary, he had never used profanity and he always

followed orders. It is ridiculous to think that an exemplary service member for 3 1/2 years would suddenly stop following orders on 2 days and use profanity for 1 day. Any reasonable person can see the injustice in this.

3. The applicant provides:

- a. A copy his DD Form 214 that shows his record of service.
- b. A self-authored statement that identifies the special consideration given when symptoms of PTSD are connected to events from a veteran's military service.
- c. Four (4) Memorandums for the Secretaries of the Military Departments that provide guidance regarding carefully consider every petition based on PTSD brought by each veteran.
- d. An ABCMR- Congressional and Special Actions Letter stated the record shown was appropriately separated in lieu of trial by court-martial.
- e. Extract-Department of the Army Historical Summary: Fiscal Year (FY) 1986 indicates a snapshot of FY 1986 Army perspective on balance budgets and the larger cuts in other programs made.
- f. DA Form 2496 shows the applicant request for discharge for the good of the service.
- g. DD Form 458 shows court-martial charges were preferred on 28 January 1986 for: wrongfully distribution of marijuana in hashish form and operation of a vehicle while drunk.
- h. Criminal Investigation Lab report showing findings did not reveal any latent print suitable for identification.
- i. ADRB Letter dated 19 April 1988 indicating an official notification, including the appropriate documentation, will be mailed to the applicant within 90 days.
- j. VA Letter dated 11 October 2007, indicated the applicants military service does not entitle him to VA benefits.
- k. DD Form 3946 shows there was a two-car accident and the type of vehicles involved in the accident.
- l. Extract Article: Know the Danger Signs and Act Quickly that explains as blood alcohol concentration (BAC) increases, so does impairment.

m. A statement of Medical Examination and Duty Status indicates the applicant was a passenger in an automobile involved in an accident on 20 March 1983. The driver, another service member (SM) of the vehicle fell asleep at the wheel, losing control of the vehicle. The applicant was in no way responsible for the accident.

n. DD Form 1920 dated 28 November 1985 shows provost marshal's office report indicates the applicant's ability to drive was unfit.

o. DD Form 2823 shows a statement from another SM.

p. 3 handwritten statements indicating the applicant's refusal to follow instructions while using profanity.

q. Extract Article: Veterans in the Criminal Justice System indicating myths about discharges and upgrading them.

r. Medical Examination for Separation statement of option indicates the applicant wanted a separation medical examination.

s. DA Fact Sheet Article 15 Information that discuss answers to common questions concerning Article 15s, sometimes called non-judicial punishment.

t. A copy of Court-Martial Charges recommended by the commander dated 28 January 1986.

u. A copy of sobriety determination showing receipt of blood sample and chain of custody.

v. 2-DA Form 4187 indicated the removal of a flag because the applicant's performance had greatly improved.

w. A copy of STAR dated 27 January 1983 shows the applicant outstanding motivation in his military occupation specialty (MOS).

x. Combat Electronic Warfare & Intelligence Certificate for outstanding contribution to the successful completion of the Army Training and Evaluation Program (ARTEP) from 11 - 17 May 1983.

y. Copies of 2-Letter of Appreciation for exemplary performance dated: 22 October 1982 and 8 February 1983

z. 11-Character Reference Letter provide an account of the applicant's character, qualities and changes seen in him since his discharge.

aa. Extract: Nonjudicial Punishment Procedure that explains the commander's responsibility for good order and discipline in their commands.

bb. Permanent Orders 80-5 dated 16 August 1985 awards the Good Conduct Medal to the applicant for exemplary behavior, efficiency, and fidelity in the Federal military service from 20 August 1982 thru 19 August 1985.

cc. Self-Authored Statement dated 22 July 24 affirming the VA has granted treatment PTSD a service-connected condition.

dd. VA Decision Letter, PTSD shows the VA has granted treatment and a rating for PTSD, a service-connected condition as of 10 January 2024.

ee. The following documents will be addressed in the applicant's service record:

- DD Form 293
- ADRB Part VI -Issues and Findings
- Separation Authority Approval

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 20 August 1982.

b. The service record is void of prior documentation of nonjudicial punishment.

c. The applicant's DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant as follows:

- Charge I, one specification of wrongfully distribution of marijuana in the hashish form
- Charge II, one specification of operating a vehicle, while drunk.
- Charge III, two specifications of being disrespectful and two specifications of disobeying orders

d. On 31 January 1986, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service

- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

e. On 12 February 1986, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 5 March 1986, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 6 months, and 16 days of active service with no lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service In Lieu of Court-Martial," with reentry code 3C, 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade

5. On 22 June 1988, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 5 February 2008, the ABCMR rendered a decision in Docket Number AR20070011996. The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

7. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 5 March 1986 discharge characterized as under other than honorable conditions and a referral to the Disability Evaluation System (DES). He has indicated on his DD 149 that PTSD is an issue related to his requests, going on to state in part:

"I was very irritable and may have come {sic} across disrespectful due to my PTSD, which was not diagnosed at the time (but has been since) while I was in the military after two (2) head on collision car accidents in 1983 and 1985. There was never any mental help offered or ever mentioned during my time in the Army from 1982-1986.

I also requested a medical examination during my release but the Army denied it. Most likely due to the Army budget. Maybe if I had been granted the medical examination that I was entitled to it would have been discovered and diagnosed.

It was an error and an injustice not to allow me to be properly evaluated. Any alleged misconduct was due to me being irritable for not being properly promoted and feeling that the whole world was against me. I was harassed and retaliated against for seeking promotions that I deserved."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 20 August 1982 and was discharged under other than honorable conditions 5 March 1986 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (20 July 1984): Discharge for the Good of the Service. There are no periods of lost time or service in a hazardous duty or imminent danger pay areas.

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. A 28 January 1986 Charge Sheet (DD form 458) shows the applicant was charged with wrongfully distribute 1.96 grams, more or less, of marijuana in the hashish form,” “operate a vehicle, to wit: a passenger car, while drunk,” and four (4) specifications of violating Article 91 of the UCMJ - Insubordinate conduct toward warrant officer, non-commissioned officer, or petty officer.

f. On 31 January 1986, the applicant voluntarily requested discharge for the good of the service under provisions provided in chapter 10 of AR 635-200. His request was approved by the Commanding General of the 3rd Infantry Division on 12 February 1986. The applicant requested a separation medical examination on 26 February 1986.

g. The requested separation medical examination was not in the supporting documents and his period of service predates the EMR. While it's absence neither proves or disproves the examination was performed, it is not relevant as even had the applicant undergone the examination and found to have condition(s) failing medical retention standards been identified, his misconduct had made him ineligible for referral to the DES. Paragraph 4-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (13 December 1985) states:

The case of a member charged with an offense, or is under investigation for an offense which could result in dismissal or punitive discharge, may not be referred for disability processing unless

a. The investigation ends without charges.

b. The officer exercising proper court-martial jurisdiction dismisses the charge.

c. The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

h. There is no probative evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.



i. Submitted documentation shows he has been granted service connection for the treatment purposes only for several conditions, including PTSD. The stressors are noted to be the motor vehicle accidents in 1983 and 1985.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? The applicant PTSD has been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially: As there is a nexus between PTSD and difficulty with authority figures and self-medicating with illicit substances, his PTSD mitigates the acts of disobeying a superior commissioned officer, disrespect, disobeying lawful orders, and driving while under the influence of alcohol. However, PTSD does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right and therefore cannot mitigate applicant's distribution of marijuana in the form of hashish.

#### 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. The applicant was charged with commission of offenses (drug distribution, driving a vehicle while drunk, disobeying orders, and disrespect) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing.

b. 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 that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided multiple letters of support of a clemency determination. However, due to the seriousness of his offenses (distribution), the Board did not find the letters of support sufficient enough to outweigh his serious misconduct. Therefore, 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.

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 to amend the decision of the ABCMR set forth in Docket Number AR20070011996 on 5 February 2008.

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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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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 (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 based on 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.

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 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 post-traumatic stress disorder (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. 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//