

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240003558

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- an in-person 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)
- VA Form 21-4138 (Department of Veterans Affairs Statement in Support of Claim), 8 November 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 deserves an upgrade of his characterization of service because his performance was great under a change of duty station, and prejudice was involved. It was hard during his overseas tour of duty, especially being on the front line in the Demilitarized Zone (DMZ) in South Korea. He was a noncommissioned officer (NCO) and when he led his squad, he noticed that they were affected as well. He missed his young son, who was born stateside, and he was dealing with stress, fatigue, and missed his family. Due to alcohol use, he got discharged. He had never been court-martialed. He received the Army Good Conduct Medal, Army Achievement Medals, and the NCO Professional Development Ribbon.
3. The applicant provides VA Form 21-4138, dated 8 November 2023, which states, in effect:
  - a. He has nightmares, dreams, sees things, and jumps when noise is around him. He gets mad easily at times and he cannot control his anger. He does not get enough

sleep at night, and it seems like some strange things are going to happen to his family. His companion is afraid of him at times, and that is why he was drinking heavily to keep things off his mind. He didn't like being on details, like being at the DMZ. He had to go through treatment twice for alcoholism, but he's been sober for 30 years. He still attends meetings with his support group.

b. He was once found to have post-traumatic stress disorder (PTSD) by a doctor and used medication. He gets lightheaded when he gets up, and he has fallen a few times because of head injuries while serving in the DMZ in South Korea. An armor personnel carrier latch knocked him out. He was stressed out, had anxiety, depression, and heart problems, so hopefully he can get an upgrade of his under honorable conditions discharge to honorable. He loved being in the service and he was proud of it.

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

a. He enlisted in the Regular Army on 16 April 1981.

b. On 8 November 1985, he accepted nonjudicial punishment (NJP) under summarized Article 15, Uniform Code of Military Justice (UCMJ), for continually being late to first formation. His punishment included 14 days extra duty, 14 days restriction, he had to move on post for 14 days, and his civilian clothes privilege was withdrawn for 14 days.

c. He received counseling's for the following:

- 18 November 1985 – violating restriction
- 27 November 1985 – not recommended for promotion due to job performance and not being at work on time

d. On 27 November 1985, he accepted NJP under Article 15, UCMJ for being AWOL from on or about 4 November 1985 to on or about 5 November 1985. His punishment included reduction to the rank/grade of private first class (PFC)/E-3, forfeiture of \$100.00 suspended until 28 February 1986, 14 days of extra duty, and restriction to the battalion area, place of duty, dining facility, and place of worship for 14 days suspended until 28 February 1986.

e. He was counseled on 10 December 1985 for failing to report to extra duty on 7 December 1985 and failing to inform the charge of quarters that he would absent or late for extra duty.

f. The suspension of the punishment of forfeiture of \$100.00 (suspended until 28 February 1986) and restriction to the battalion area, place of duty, dining facility, and place of worship for 14 days (suspended until 28 February 1986) imposed on

27 November 1985 was vacated. The unexecuted portions of the punishment would be duly executed. Vacation was based on the following offense: he willfully disobeyed a lawful command from his superior commissioned officer to stay in the Alpha Company billets, or words to that effect, on or about 31 December 1985.

g. On 11 February 1986, he accepted NJP under Article 15, UCMJ for willfully disobeying a lawful command from his superior commissioned officer on or about 31 December 1985. His punishment included reduction to the rank/grade of private (PV2)/E-2, forfeiture of \$100.00, restriction for 14 days, and extra duty for 14 days.

h. The applicant was counseled on 11 February 1986 for his duty performance and continued misconduct.

i. On 12 March 1986, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, paragraph 13-2a, by reason of unsatisfactory performance, and advised the applicant of his rights. The commander listed the following reason for the proposed separation: his unsatisfactory performance consisted of failure to go to the appointed places of duty without authority, absent from appointed places of duty without authority, disobeying a lawful command, and poor duty performance. Counseling's and nonjudicial punishments had been ineffective.

j. On 12 March 1986, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 13, and its effects, of the rights available to him. He acknowledged that he was provided the opportunity to consult with legal counsel. He elected not to waive his rights. He elected to submit statements in his own behalf. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that he would be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge.

k. On 12 March 1986, the applicant's immediate commander-initiated separation under the provisions of AR 635-200, chapter 13, paragraph 13-2a. The commander requested a waiver of rehabilitative transfer and stated rehabilitation would not be in the best interest of the Army as it would not produce a quality Soldier.

l. A memorandum for record, dated 24 March 1986, which shows the applicant was given a reasonable time to submit statements on his own behalf as indicated on the Receipt of Notification, and failed to submit any statements.

m. On 10 April 1986, the intermediate commander recommended approval of the proposed separation and stated the applicant did not demonstrate potential for

rehabilitation, and recommended approval of the request for waiver of rehabilitative transfer.

n. On 18 April 1986, the separation authority approved the discharge and the request for waiver of rehabilitative transfer. He directed the applicant be issued an under honorable conditions (general) discharge and stated he would not be placed to the Individual Ready Reserve.

o. The applicant was discharged on 28 April 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 13, in the rank/grade of private PV2/E-2, and his service was characterized as under honorable conditions (general). He completed 5 years and 13 days of net active service during this period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Good Conduct Medal, the Overseas Service Ribbon, NCO Professional Development Ribbon (1), Marksmanship Badge (rifle M-16) and Sharpshooter Badge (hand grenade)
- Item 26 (Separation Code): JHJ
- Item 27 (Reenlistment Code): RE-3/3C
- Item 28 (Narrative Reason for Separation): Unsatisfactory performance

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 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 16 April 1981; 2) On 12 March 1986, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200, chapter 13, paragraph 13-2a, by reason of unsatisfactory performance. The commander listed the following reason for the proposed separation: his unsatisfactory performance consisted of failure to go to the appointed places of duty without authority, absent from appointed places of duty without authority, disobeying a lawful command, and poor duty performance. Counseling's and nonjudicial punishments had been ineffective; 3) The applicant was discharged on 28 April 1986, chapter 13, unsatisfactory performance. His service was characterized as under honorable conditions (general).

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) and VA documentation provided by the applicant were also examined.

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 including PTSD, 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:

After reviewing the application and 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 applicant's statement and contentions, his record of service, the frequency and nature of his misconduct, the reason for his separation and the character of service he received upon discharge. The Board considered the applicant's statement regarding PTSD and the review and conclusions of the medical advisor. The Board found: (1) The applicant asserts that he experienced PTSD which mitigates his misconduct; (2) The applicant asserts that he experienced PTSD while on active duty; (3) There was insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. Based on a preponderance of evidence the Board determined that there was insufficient evidence of a mitigating condition at the time of his misconduct. 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 applicant's character of service upon separation was not in error or unjust and that an upgrade as a matter of liberal consideration was not warranted.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

**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.

6/11/2025

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 13 provided procedures and guidance for eliminating enlisted personnel determined unqualified for further military service because of unsatisfactory performance. Paragraph 13-2 states, commanders will separate a member for unsatisfactory performance when it is clearly established that:
    - (1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.
    - (2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.
    - (3) It is likely that the member will be a disruptive influence in present or future duty assignments.
    - (4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.
    - (5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.
    - (6) The member meets retention medical standards (Army Regulation 40-501).

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 13, for unsatisfactory performance would receive a separation code of "JHJ (JKJ)."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 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.

6. 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.

7. 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.

8. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

- a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
- b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//