

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240004033

APPLICANT REQUESTS:

- reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General)
- removal of derogatory information
- restoration of his rank/grade to specialist/E-4
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- affidavit in support of petition
- excerpts from the Electronic Code of Federal Regulations (eCFR)
- in-service medical documents
- in-service personnel documents

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 Numbers AR1999031152, AR20150007869, AR20160019718, and AR20230000203 on 2 March 2000, 2 February 2016, 6 June 2019, and on 15 August 2023, respectively.

2. In a new argument, the applicant states there were procedural errors in his court-martial charges and subsequent administrative discharge. He did not meet the requirements for being absent without leave (AWOL) under the provisions of Title 38, Code of Federal Regulations (CFR) 3.12 (Benefit Eligibility Based on Character of Discharge). A valid defense exists for the absence which would have precluded conviction for being AWOL. The charges filed against him were incorrect and in error. This is an injustice in his military record.

3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request.

4. On 22 March 1983, the applicant enlisted in the Regular Army, for 2 years. The highest grade he attained was E-4.
5. The applicant served in Grenada from 25 October 1983 to 3 November 1983.
6. He reenlisted on 18 October 1984 for 3 years in the grade of E-3.
7. On 22 October 1984, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully using marijuana between on or about 29 August 1984, and on or about 7 September 1984; and having an adverse impact on military fitness and readiness, and prejudicial to good order and discipline in the Armed Forces. His punishment included reduction to E-2 and 14 days extra duty.
8. On 15 November 1984, the applicant was reported as AWOL and remained absent until he returned to military control on 19 November 1984.
9. On 3 December 1984, the applicant was reported as AWOL a second time, and remained absent until he returned to military control on 11 February 1985.
10. Court-martial charges were preferred against the applicant on 13 February 1985, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL.
11. On 14 February 1985, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.
  - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
  - b. He declined to submit a statement in his own behalf.

12. On 15 February 1985, the applicant's commander recommended approval of the applicant's request for discharge.

13. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 1 March 1985, and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

14. The applicant was discharged on 20 March 1985. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reenlistment Code 3. He completed 1 year, 9 months, and 17 days of net active service this period with 74 days of lost time.

15. Additionally his DD Form 214 shows he was awarded or authorized the Expert M-16 Rifle Badge, Expert Hand Grenade Badge, Army Service Ribbon, Parachute Badge, and the Army Achievement Medal.

16. The applicant petitioned the Army Review Discharge Board for consideration of his request for upgrade of his UOTHC discharge. On 11 July 1988, the Board voted to deny relief and determined his discharge was both proper and equitable.

17. A DD Form 215 (Correction to DD Form 214), dated 6 October 1988, shows the applicant was awarded the Armed Forces Expeditionary Medal (Grenada).

18. The applicant petitioned the ABCMR multiple times between March 2000 through August 2023, for consideration of his request for upgrade of his UOTHC discharge. On 15 August 2023, the Board voted to deny relief and determined that the overall merits of his case were insufficient as a basis to amend the previous decisions of the ABCMR.

19. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment.

20. The applicant provides:

a. Excerpts from the CFR that presents a comprehensive reference point for guidance on military character of discharge, campaigns and expeditions that qualify for Veterans preference.

b. In-service medical documents that show he received treatment on multiple occasions for injuries to his head.

21. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

22. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

23. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 22 March 1983 and served in Grenada from 25 October 1983 to 3 November 1983. He reenlisted on 18 October 1984.
- On 22 October 1984, the applicant accepted NJP for wrongfully using marijuana between 29 August 1984 and 7 September 1984, having an adverse impact on military fitness and readiness, and prejudicial to good order and discipline in the Armed Forces.
- Court-martial charges were preferred against the applicant on 13 February 1985, for violations of the UCMJ. His Charge Sheet shows he was charged with two specifications of going AWOL. The applicant voluntarily requested discharge under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial.
- The applicant was discharged on 20 March 1985 and completed 1 year, 9 months, and 17 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he did not meet the requirements for AWOL, and the charges against him were incorrect. This assertion is beyond the scope of this behavioral health advisor's expertise so no opinion will be provided. However, the applicant also indicated PTSD and other mental health as mitigating factors in his misconduct. He provided a lengthy account of his experiences in Grenada, which included threat of loss of life, and his subsequent substance use to self-medicate mental health symptoms. The file

contained previous ABCMR cases, AR1999031152 (March 2000), AR20150007869 (February 2016), AR20160019718 (June 2019), and AR20230000203 (August 2023), and the most recent case in 2023 concluded a nexus between the applicant's symptoms and his misconduct that partially mitigates his discharge. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated homeless services from the VA in March 2015 following release from incarceration related to DUI charges. However, he did not initiate mental health treatment until January 2019, but he reported a history of non-VA psychiatric and substance abuse treatment dating back to 2003. He reported nightmares and expressed belief that he has PTSD based on an evaluation from 2016 (record not available), and he was diagnosed with Opioid Use Disorder, Cocaine Use Disorder, Alcohol Use Disorder (all in early remission), and a rule out diagnosis of Unspecified Anxiety Disorder. He reported deployment-related trauma history from his time in Grenada, and he denied any history of military sexual trauma (MST). The applicant elected to continue care in the community and indicated he would follow up in the future if needed. He was next seen on 1 October 2019 after completing a court-ordered intensive outpatient program (IOP), and he requested to transfer his mental health treatment to the VA. His medications, including two antidepressants, a medication for nightmares, and a blood pressure medication used to treat anxiety, were renewed. The applicant followed up two months later for refills, but he was not seen again for mental health until 8 September 2020 when he reported worsening symptoms secondary to having run out of medication. He discussed sleep difficulty, hopelessness, feelings of worthlessness, and increased anxiety symptoms, and his medications were renewed. His next encounter was in May 2021 for medication renewal after discontinuation for four weeks, and his medications were renewed. He had routine follow up for medication management in 2022 and 2023, and his diagnoses were Generalized Anxiety Disorder and Insomnia. Notably, it was documented that he denied symptoms of PTSD and symptoms were mostly controlled with medications. Documentation in 2024 showed he has continued to utilize the VA's homeless/housing program and mental health for medication management, and his most recent visit was on 19 September 2024 for medication renewal of an antipsychotic commonly used for sleep, an antidepressant, and a medication for nightmares. Although documentation indicated the applicant is service connected at 0% for "neurosis," VA records do not show a service connection, and the applicant's eligibility for services is shown as for humanitarian/emergency.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that fully mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no in-service records indicating any mental health symptoms or diagnoses, but there is post-discharge diagnoses of substance abuse and Anxiety Disorder dating back to 2019.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He reported deployment-related trauma from his time in Grenada as well as trauma associated with a motor vehicle accident.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the applicant was diagnosed with an Anxiety Disorder and several substance abuse related conditions by the VA in 2019. He has reported symptoms associated with trauma exposure, including sleep difficulty, nightmares, anxiety, and hyperarousal symptoms, but there is insufficient evidence of meeting full criteria for a service-related diagnosis of PTSD. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Additionally, substance use is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can also be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service, and the number of years between his service and his diagnoses makes it difficult to support a fully mitigating nexus between his mental health condition and his misconduct. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade. Partial. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the

reason for separation. The applicant was charged with being absent without leave, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust. However, the Board determined the applicant served a period of honorable service and his record should be updated to reflect:

- CONTINUOUS HONORABLE SERVICE FROM 830322 UNTIL 841017
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

b. Removal of derogatory information. Deny. The Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the proceedings are substantially incorrect and support removal. Therefore, the Board denied relief.

c. Restoration of his rank/grade to SPC/E-4. Deny. The evidence shows the applicant was discharged and reduced to the lowest enlisted grade. The Board found no error or injustice and denied relief.

2. 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:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 20 March 1985, to show:

- CONTINUOUS HONORABLE SERVICE FROM 830322 UNTIL 841017
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of the above.

3/26/2025

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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.



REFERENCES:

1. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

2. 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.

a. Paragraph 2-9 states 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.

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.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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 Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

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.

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//