

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240004561

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge (UOTHC) to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 27 February 2024
- Self-authored Statement, undated

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 Dockets Number AR20120005448 and AR20170000984, on 18 September 2012 and 26 June 2020, respectively.

2. The applicant indicates on his application that post-traumatic stress disorder (PTSD) and other mental health issues or conditions are related to this request. He states:

a. He was misled and totally unaware of his future by signing the Chapter 10 discharge request. He needed a physical evaluation before his separation due to a slipped-disc in his back, of which he told his squad leader at the time. This happened when he was cross-training as a heavy-wheeled mechanic in 1994 at Camp Eagle, South Korea. He was denied medical treatment.

b. He has ringing in both his ears and needs arch support in his shoes.

c. He is suffering from PTSD and erectile dysfunction.

d. All of his problems occurred while he was in service.

e. He needs an upgrade so he can apply for medical benefits.

3. A review of the applicant's service records show the following:

a. On 12 March 1993, in connection with an enlistment, he underwent a medical examination and was found qualified for enlistment. He attained the rank of private first class (PFC).

b. On 9 April 1993, he enlisted in the Regular Army for 3 years.

c. On 2 September 1994, he accepted nonjudicial punishment for disobeying a lawful order from a noncommissioned officer and failing to pay a taxi debt. He was reduced to E-2.

d. On 8 October 1994, he completed his tour in South Korea and was assigned to Fort Campbell.

e. On 27 March 1995, he was reported absent without leave from his unit at Fort Campbell.

f. On 28 July 1995, he was confined by civil authorities in (County) Jail, Texas as a result of charges for robbery.

g. On 3 November 1995, he was released from civil confinement and returned to military control; his sentence for time served for civil charges was completed.

h. On 8 November 1995, court-martial charges were preferred against him. A DD Form 458 reflects he was charged with being absent without leave from 27 March 1995 to 3 November 1995 (221 days).

i. On 9 November 1995, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of a UOTHC discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He did not submit a statement in his own behalf. He waived a separation physical examination.

j. On 12 January 1996, the separation authority approved his request.

k. On 12 February 1996, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged under the provisions of Army Regulation 635-200, chapter 10 with a UOTHC characterization of service. He competed 2 years, 2 months, and 26 days with 221 days' time lost.

4. On 18 September 2012 and in ABCMR Docket Number AR20120005448 the Board denied his request for an upgrade finding all rights of law and regulation were met and his rights were fully protected throughout the separation process.

5. On 26 June 2020 the ABMCR reconsidered his request for an upgrade and found insufficient evidence of an error or injustice which would warrant a change to his characterization of service.

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

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Other Mental Health Issues are 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 09 April 1993, 2) he received nonjudicial punishment (NJP) on 02 September 1994 for disobeying a lawful order from a noncommissioned officer (NCO) and failing to pay a taxi debt, 3) he was reported absent without leave (AWOL) from his unit on 27 March 1995, 4) on 28 July 1995 he was confined by civil authorities in county jail as a result of charges for robbery. On 03 November 1995, he was released and returned to military control. His sentence for time served for civil charges was completed, 5) on 8 November 1995, court-martial charges were preferred against the applicant for being AWOL from 27 March 1995 to 3 November 1995, 6) the applicant was discharged on 12 February 1996 under the provisions of AR 635-200, chapter 10 with a UOTHC characterization of service. He competed 2 years, 2 months, and 26 days with 221 days' time lost, 7) the applicant's previous petitions for relief to the ABCMR on 18 September 2012 and 26 June 2020 were denied.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service records included as part of his application were reviewed. A Report of Medical Examination dated 12 March 1993 for the purposes of enlistment shows item

number 42, psychiatric, as 'normal' on clinical evaluation. There were no additional in-service medical records available for review.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that his UOTHC discharge renders him ineligible for VA services.

e. The applicant included a self-authored statement as part of his application. He stated he needed a physical examination prior to separation due to a slipped-disc in his back that happened in 1994 and contends that his squad leader did not allow him to seek medical care at the time. He also indicated additional health concerns including ringing in both ears, required arch support due to fallen arches in basic training, PTSD/unstable mood, and erectile dysfunction. He further contends that he started using alcohol and drugs and was homeless for years without purpose or hope.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and robbery. The applicant provided no service achievements or character letters of support attesting to his character for the Board to consider clemency. Furthermore, the Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20120005448 and AR20170000984, on 18 September 2012 and 26 June 2020.

//SIGNED//

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 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial

charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

3. 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 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.

4. 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.

5. 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/NR) 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.

//NOTHING FOLLOWS//