

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240004764

APPLICANT REQUESTS:

- an upgrade of his under conditions other than honorable characterization of service
- a personal appearance hearing before the Board (via video/telephone)

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

- DD Form 149 (Application for Correction of Military Record), 20 March 2024
- Two Certificates of Appreciation, 26 June 1981
- Four letters of employment, from 16 August 1991 to 8 December 1995
- Ten pages of medical records, 15 November 2024
- State driver's license

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 while serving in Germany from 1978 to 1979, he was reported absent without leave (AWOL) on three separate occasions for alcohol and drug use. He was very young and was not aware the AWOL charges would affect his characterization of service. Since his discharge in service, he has made continuous efforts to try and improve himself.
3. He provides:
 - a. Two Certificates of Appreciation, 26 June 1981, he was awarded from the National Safety Counsel Defensive Driving Campaign and the National Committee for Employer Support of the Guard and Reserve.

b. Five letters of employment, showing his employment history covering the period from 16 August 1991 to 8 December 1995.

c. Ten pages of medical records, showing he suffers from the following illnesses/injuries:

- Depression due to physical illness
- Hearing loss of left ear
- Elevated brain natriuretic peptide level
- Panhypopituitarism
- Hypothyroidism,
- Chronic low back pain
- Dyslipidemia
- Prediabetes
- Urinary frequency
- Bilateral hip pain

4. His record shows:

a. He enlisted in the Regular Army on 19 November 1976.

b. On 6 December 1977, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 27 November 1977, through neglect, miss the movement of his unit, with which he was required in the course of duty to move. His punishment included reduction to the grade/rank of private second class/E-2 (suspended for 60 days) and 14 days restriction and extra duty.

c. On 4 December 1978, he accepted NJP under the provisions of Article 15, UCMJ, for, on or about 10 November 1978, without authority, go from his appointed place of duty, to wit: Charge of Quarters Runner, and on or about 13 November 1978, fail to go at the time prescribed to his appointed place of duty, to wit: bed check. His punishment included forfeiture of \$233.00 per month for two months (suspended for six months) and 30 days confinement.

d. The Company B, 2nd Battalion, 4th Infantry Memorandum (Transmittal of Court-Martial Charges), 18 January 1979, shows the applicant's company level commander forwarded court-martial charges that were preferred against him. He recommended the applicant be tried by a Special Court-Martial (Note: the applicant's record did not contain a DA Form 458 (Charge Sheet) and the court-martial charges preferred against the applicant not available for the Board to view.)

e. On 19 January 1979, his battalion level commander recommended he be tried by a special court-martial for the alleged offense of breach of correctional custody. The alleged offense occurred on 14 January 1979.

f. On 26 January 1979, the applicant's intermediate commander recommended approval of the applicant's request for discharge, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service. (Note: the applicant's record did not contain a formal request for discharge and is not available for the Board to review.)

g. On 24 January 1979, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, chapter 10, for the good of the service. He directed the applicant be issued an under other than honorable conditions characterization of service and he be reduced to the lowest enlisted grade.

h. On 7 February 1979, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any significant medical issues and found the applicant qualified for separation.

i. The applicant was discharged on 9 March 1979. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private/E-1, and his service was characterized as under conditions under than honorable. He completed 2 years, 3 months, and 21 days of net active. He was assigned the separation code of JFS and the RE code of 3.

j. On 8 February 1995, the Army Discharge Review Board notified the applicant that his appeal for an upgrade of his under conditions other than honorable characterization of service had been denied.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR to request an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions during his time in service that mitigate his misconduct. 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 19 November 1976; 2) The applicant was given NJP on at least 3 separate occasions: The first on 6 December 1977 for missing movement, the second on 28 April 1978 for going AWOL on 01 April 1978, and the third on 04 December 1978 for going AWOL on 3 separate nonconsecutive days; 3) In addition, court-martial charges were recommended on 19 January 1979 for breaching correctional custody; 4) The applicant's full discharge documentation including a charge sheet was unavailable for review; 5) The applicant was discharged on 9 March 1979, Chapter 10. His character of service was under other than honorable conditions. He completed 2 years, 3 months, and 21 days of net active service. 6) The applicant previously applied to the ABCMR for discharge upgrade on 08 February 1995 where his discharge was determined to be fair and equitable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy civilian medical records provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced other mental health conditions during his time in service that mitigate his misconduct. The applicant described that alcohol and drug use played a role in his misconduct leading to his military discharge. There is insufficient evidence that the applicant reported or was diagnosed any mental health conditions while on active service. On 07 February 1979, the applicant underwent a medical evaluation during the course of his separation from the military that indicated normal psychiatric functioning.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time. The applicant provided hardcopy civilian medical records from a 05 November 2024 visit documenting his current medical conditions as well as noting treatment for the diagnosis of depression due to a physical illness. The documentation provided did not connect his depression to his military service.

e. The applicant asserts he experienced mental health conditions while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions while on active service. There is also insufficient evidence of the facts and circumstances of the case to provide a complete opinion on the case as presented.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing other mental health conditions at the time of his active service which mitigates his misconduct. The applicant provided hardcopy civilian medical documentation dated 05 November 2024 that showed the applicant carried the diagnosis of depression due to a physical illness.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing other mental health conditions at the time of his active service which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with any service-connected mental health condition. The applicant did engage in some avoidant misconduct such as going AWOL, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the applicant's reported mental health conditions and the applicant missing movement and breeching correctional custody in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions; 2) Most mental health conditions do not impact one's ability to distinguish right from wrong. There was also insufficient documentation provided regarding the facts and circumstances of the case to provide a complete opine regarding mitigation, as appropriate. However, per Liberal Consideration, the applicant's experience of mental health conditions alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the following findings outlined in the medical review;

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition experience actually excuse or mitigate the misconduct? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

X

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of

service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under conditions under than honorable is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. AR 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 10 for the Good of the Service in lieu of court-martial would receive a separation code of "JFS."

4. AR 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.

//NOTHING FOLLOWS//