

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240004886

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general), and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- letter, U.S. Vets, Las Vegas, dated 4 March 2024

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 that he was promised by his Army recruiter that he could stay on the psychotropic medication that he had been taking since he was 7-years old. He was diagnosed with attention deficit hyperactivity disorder, depression, anxiety, and obsessive compulsive disorder (OCD). He was taking Dexedrine and Klonopin. When he was no longer allowed to use it, he became severely mentally ill. He was treated like a criminal when all he needed was his medication. He would like to access Department of Veterans Affairs (VA) medical benefits.
3. Prior to his enlistment, the applicant underwent a medical examination on 3 April 1980. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) shows that he reported being in good health. He did not report a history of behavioral health issues or that he was taking any medication. The examining provider medically cleared him for enlistment.
4. The applicant enlisted in the Regular Army on 7 May 1980 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 63B (Light Wheeled Vehicle/Power Generator Mechanic). The highest rank he attained was private/E-2.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 2 February 1981, for failure to obey a lawful order by drinking beer while in the execution of his military duties, on or about 23 January 1981. His punishment consisted of reduction to private/E-1, forfeiture of \$100.00 pay, 14 days of extra duty, and 14 days of restriction.

b. On 5 May 1981, for two specifications of failure to go at the time prescribed to his appointed place of duty, on or about 1 May and 2 May 1981. His punishment consisted of forfeiture of \$100.00 pay, 14 days of extra duty, and 14 days of restriction.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) is not available for review in the applicant's service record.

7. The applicant consulted with legal counsel on 9 February 1982.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

8. An SF 600 (Health Record – Chronological Record of Medical Care) shows that on 17 February 1982 went to the clinic to request a psychiatric evaluation. It was noted he wanted to see a psychiatrist prior to accepting a "chapter discharge."

9. The applicant underwent a separation medical examination on 19 February 1982. The relevant SF 93 and corresponding SF 88 show he reported being in good health.

He noted a history of ringing in his ears and that the Army said he was homicidal. The examining provider determined he was medically qualified for separation.

10. The applicant's immediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge. The commander stated that there were no reasonable grounds to believe the applicant was, at the time of the offenses, mentally defective, deranged, or abnormal.

11. The applicant's intermediate commanders recommended approval of the request for discharge for the good of the service with the issuance of a UOTHC discharge.

12. The applicant underwent a mental status evaluation on 22 February 1982. The evaluating provider noted there was no indication of significant mental illness and psychiatrically cleared the applicant to participate in administrative proceedings.

13. The separation authority approved the applicant's request for discharge on 26 February 1982 and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

14. Accordingly, the applicant was discharged on 4 March 1982, under the provisions of Army Regulation 635-200, Chapter 10, by reason of administrative discharge - conduct triable by court-martial. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows his service was characterized as UOTHC, with separation code JFS and reenlistment code RE-3, 3C. He completed 1 year, 9 months, and 28 days of net active service. He was awarded or authorized the Army Service Ribbon, Overseas Service Ribbon, and Sharpshooter Marksmanship Qualification badge with Rifle bar (M-16).

15. The applicant provides a letter from a U.S. Vets, Las Vegas, Licensed Clinical Social Worker, dated 4 March 2024, wherein the author states:

a. The applicant was recruited using a bait and switch tactic. He was told by his recruiter that he could continue taking his psychotropic medications. As soon as he arrived at boot camp, he was told he could no longer take them.

b. His first duty station was in Germany. He felt himself spiraling into severe and chronic anxiety and depression without his medication. He self-medicated with alcohol and marijuana so he could focus on his work. His behavior became erratic, and he received multiple Articles 15. He began experiencing psychotic episodes including hallucinations and hearing voices. Despite being mentally unstable, he was not offered a mental health evaluation or any treatment. He continued getting into trouble and received 32 Articles 15 in a two-year period. After three years of constantly receiving

nonjudicial punishment, he received a court-martial where he was offered six months in prison or a dishonorable discharge. Unstable and suicidal, he left the service with severe mental illness.

c. Having stopped his medication cold turkey after 12 years of use caused severe and chronic anxiety, depression, OCD, and suicidal ideation. His mental health conditions were exacerbated by the conditions he experienced in the military. He has been homeless since his discharge. His discharge was a grave miscarriage of discharge. He should have VA medical benefits.

16. Discharges under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. His contention is that the circumstances leading to his discharge were attributable to his experience of mental health disorders prior and during his time in service. 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 07 May 1980; 2) The applicant accepted nonjudicial punishment on 02 February 1981 for drinking on duty and on 05 May 1981 for two counts of failure to be in his assigned place of duty; 3) Court-martial charges were preferred against the applicant. However, the relevant Charge Sheet was not available for review; 8) The applicant was discharged on 04 March 1982, Chapter 10-conduct triable by court-martial. He completed 1 year, 9 months, and 28 days net active service. His military service was characterized as under other than honorable conditions.

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

c. The applicant asserts that his prior mental health conditions were exacerbated by his military service and impacted his conduct leading to discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition

while on active service. The applicant had previously denied any prior mental health conditions or treatment including medication during his military medical entrance examination on 03 April 1980 and was cleared from a medical perspective for military service. The applicant underwent a medical separation examination on 19 February 1982 and a mental status evaluation on 22 February 1982 as part of his separation process. During his clearance evaluations, the applicant was not diagnosed with a mental health condition. He was subsequently cleared by both from a psychiatric perspective to participate in the administrative proceedings.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no results were found. He does not have any VA service-connected disability for a mental health condition at this time. The applicant provided a hardcopy one-time psychological assessment from U.S. Vets Las Vegas completed by a licensed clinical social worker dated 04 March 2024. Per the applicant's self-report, the provider indicated that the applicant's military service likely exacerbated his pre-existing mental health symptoms which have continued since his time in service. The applicant's mental health examination resulted in the current diagnoses of "ADHD, depression, anxiety (Panic), obsessive compulsive disorder (OCD), and suicidal ideation." The evaluation indicated the applicant's military service to exacerbating previously diagnosed symptoms of depression and anxiety, including alleging a psychotic break for an unspecified amount of time prior to leaving the military. The applicant indicated that he did not receive mental health care while in the military and has not been engaged in care since that time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence the applicant has been diagnosed with a partially mitigating mental health condition in 2024. The applicant was diagnosed with depression and anxiety. This was per the applicant's report to a civilian provider of his history of mental health symptoms. The provider concluded after one appointment with the applicant that his symptoms were exacerbated by and present during his active service. However, there was insufficient evidence available regarding the events that resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience.

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 mental health conditions prior to and throughout his time in active service. This was corroborated by a one-time psychological evaluation on 04 March 2024, based on the applicant's report of these events.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced continued mental health conditions at the time of his

active service, which mitigates his misconduct. The applicant contends that he experienced multiple mental health conditions during his time in service including depression, anxiety, and psychosis. This was corroborated by a one-time psychological evaluation on 04 March 2024, based on the applicant's report, that continued the diagnoses of depression and anxiety and included ADHD, OCD, and suicidal ideation.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, the applicant contends he experienced mental health conditions during his time in service. However, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health conditions during his time in service. The applicant and a civilian social worker surmised the applicant was experiencing depression, anxiety, and psychosis during the time of his active service. While there is limited evidence concerning the surrounding events which resulted in the applicant's discharge, there is evidence the applicant did receive punishment for failure to obey orders and consuming alcohol while on duty. This type of erratic behavior can be a natural sequelae to mental health conditions such as anxiety and depression. However, there is no documentation other than self-report and the applicant's one-time evaluation of the applicant's mental health concerns, nor is there any documentation surrounding the events leading to his discharge. Therefore, there is insufficient evidence surrounding the events that resulted in the applicant's discharge to provide a complete and appropriate opinion on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense policy for consideration of discharge upgrade requests, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, the military record, the frequency and nature of his misconduct, the absence of the court-martial charges pending against him, his request for separation in-lieu of court-martial, the reason for his separation and the character of service he received upon discharge. The record did not contain evidence of the nature of the misconduct that led to court-martial charges. The Board considered the evidence of his in-service medical evaluations and the review and conclusions of the medical advisor. The Board found: (1) the applicant contends he was experiencing mental health conditions prior to and throughout his time in active service. This was corroborated by a one-time psychological evaluation on 04 March 2024, based

on the applicant’s report of these events; (2) the applicant contends he experienced continued multiple mental health conditions at the time of his active service, which mitigates his misconduct. This was corroborated by a one-time psychological evaluation on 04 March 2024, based on the applicant’s report, that continued the diagnoses of depression and anxiety and included ADHD, OCD, and suicidal ideation; (3) the Board determined that while the applicant contends he experienced mental health conditions during his time in service, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health conditions during his time in service. Based on a preponderance of evidence the board determined that the applicant’s character of service at the time of separation was not in error or unjust and that there is insufficient evidence of mitigation to grant an upgrade of his discharge as a matter of liberal consideration.


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:

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

  
**X** //SIGNED//

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 (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10 USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. 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 regulation provides:
  - a. 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. It is not an investigative body.

b. 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.

4. 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 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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//