

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240004911

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 31 January 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 he has been a model citizen since his discharge with full time employments and no legal issues. He is seeking an upgrade of his service characterization for medical benefits (presumed to mean Department of Veterans Affairs (VA) eligibility).
3. A review of the applicant's records shows:
 - a. He enlisted in the Regular Army on 12 April 1974.
 - b. On 15 January 1975, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for absenting himself from his unit from on or about 26 December 1974 until on or about 8 January 1975. His punishment included forfeiture of \$100 pay for 1 month, reduction to the rank/grade of private/E-1 (suspended for 90 days), 15 days of restriction, and 15 days of extra duty.
 - c. Four DA Forms 4187 (Personnel Action) show the applicant's duty status changed as follows:
 - 11 February 1975 – Present for Duty (PDY) to Absent without Leave (AWOL)
 - 14 February 1975 – AWOL to PDY

d. Headquarters, 13th Corps Support Command (Provisional), Special Court-Martial Order Number 20, 2 April 1975, shows the applicant was convicted by a special court-martial for:

(1) Charge 1: one specification of violation of Article 86 (AWOL) for being absent from his unit without authority on or about 11 February 1975 and remaining so absent until on or about 14 February 1975.

(2) Charge 2: one specification of violation of Article 107 (False Official Statement) for making an official statement to Sergeant First Class T____ H____ with intent to deceive on or about 11 November 1974, to wit: that he was enrolled in a General Education Development Course at the Education Center, which was wholly false and was then known to be false.

(3) His punishment, adjudged on 25 March 1975, included confinement at hard labor for 2 months and forfeiture of \$200 pay per month for 2 months.

e. On 7 May 1975, the applicant's immediate commander formally recommended his discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5. He noted the reason for his recommendation was the applicant's frequent incidents of a discreditable nature.

f. On the same day, the applicant acknowledged he was advised by his counsel of the basis for the contemplated action to separate him for unfitness under the provisions of Army Regulation 635-200, paragraph 13-5. He requested to have his case considered by a board of officers, a personal appearance before the board, and representation by counsel.

g. On 8 May 1975, the applicant's intermediate commander recommended approval of the applicant's proposed discharge under the provisions of Army Regulation 635-200, paragraph 13-5.

h. On 30 May 1975, a board convened to determine whether the applicant should remain in service or be administratively separated. The board determined the evidence presented substantiated a finding that the applicant was unfit for service. The board recommended the applicant's eliminated from the service for unfitness with issuance of an Undesirable Discharge Certificate.

i. On 4 June 1975, the separation authority approved the applicant's recommended separation with the issuance of an Undesirable Discharge Certificate.

j. He was discharged on 5 June 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation

635-200. He completed 11 months and 20 days of net active service during this period. His service was characterized as under honorable conditions.

4. There is no evidence indicating the applicant applied to the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

5. In reaching its determination, the Board may 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 under honorable conditions (general) characterization of service. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (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 12 April 1974, 2) he received an Article 15 on 15 January 1975 for absencing himself from his unit from on or about 26 December 1974 to on or about 08 January 1975, 3) the applicant was convicted by a Special Court-Martial on 02 April 1975 for the following: being absent without leave (AWOL) from on or about 11 February 1975 until on or about 14 February 1975, and for making a false official statement with intent to deceive on or about 11 November 1974, 4) On 7 May 1975, the applicant's immediate commander formally recommended his discharge under the provisions of AR 635-200, paragraph 13-5. He noted the reason for his recommendation was the applicant's frequent incidents of a discreditable nature. On 30 May 1975, a board convened to determine whether the applicant should remain in service or be administratively separated, and the board determined the evidence presented substantiated a finding that the applicant was unfit for service. The board recommended the applicant's eliminated from the service for unfitness with issuance of an Undesirable Discharge Certificate, 5) the applicant was discharged on 05 June 1975 under the provisions of AR 635-200, with a Separation Program Designator of 'JKA.'

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) and Veterans Benefits Management System (VBMS) were 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. There were no military medical records available for review.

d. A review of JLV shows the applicant is 10% service-connected through the VA for Tinnitus. He is not service-connected for any BH conditions. A VA Rating Decision Letter dated 10 May 2006 shows his claim for PTSD was denied. His claim for service-connection due to depression was denied on 16 December 2008. The letter stated that his service treatment records were “negative for diagnosis, treatment or complaints of depression. The separation examination of May 1, 1975 does not list this condition and does not show treatment or diagnosis for any mental disorder.” A VA Rating Decision Letter dated 19 February 2010 shows that his claim for service connection for depression/adjustment disorder was denied because the evidence submitted was not new and material. The applicant underwent a VA Compensation and Pension (C&P) examination on 10 March 2011, noting his original examination was completed on 28 April 2005 [*Advisor’s Note: the 2005 examination was unavailable for review to this Advisor*]. The evaluating provider diagnosed him with Major Depressive Disorder secondary to medical condition (back injury). It was noted that he was not service-connected for the back injury at the time of the evaluation. Thus, the provider concluded, in effect, that service-connection for his depression was contingent upon a decision regarding service-connection for his back injury, indicative that if he was service-connected for his back injury then it would be more likely than not that his depression was related to military service. It is of note that several of his VA treatment notes prior to 2013 documented a diagnosis as PTSD, though the symptoms and diagnostic criteria used to diagnose the condition were not documented in the record. A VA consult note dated 19 August 2013 shows he was specifically evaluated for PTSD. The evaluating provider documented that the stressor he identified during the interview (i.e., being away from home for the first time while in the military) was not a qualifying Criterion A event as required for the diagnosis of PTSD and thus did not meet diagnostic criteria for the condition. His diagnosis was documented as Depressive Disorder Not Otherwise Specified (NOS).

e. 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, per liberal guidance, his assertion is sufficient to warrant the Board’s consideration.

f. 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.

(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. There were no in-service medical records available for review and he is not service-connected through the VA for any BH conditions. The applicant was diagnosed with Major Depressive Disorder due to a Medical Condition (back injury) during a VA C&P examination in 2011; however, the provider was unable to determine if his depression was more likely than not related to service in the absence of a determination regarding service-connection for the associated injury. The available records to date do not show that the applicant has been service-connected through the VA for a back injury. The available VA medical records show he was evaluated for PTSD in 2013 and determined to not meet diagnostic criteria for the condition. 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, 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 not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, regulation, medical advisor's review, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to an honorable. The applicant provided no evidence of post-service achievements and served less than a year, with two period of AWOL. The Board noted and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable characterization of service. Therefore, the Board denied relief.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(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.

(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. There were no in-service medical records available for review and he is not service-connected through the VA for any BH conditions. The applicant was diagnosed with Major Depressive Disorder due to a Medical Condition (back injury) during a VA C&P examination in 2011; however, the provider was unable to determine if his depression was more likely than not related to service in the absence of a determination regarding service-connection for the associated injury. The available records to date do not show that the applicant has been service-connected through the VA for a back injury. The available VA medical records show he was evaluated for PTSD in 2013 and determined to not meet diagnostic criteria for the condition. 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, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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

█ █ █ 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.

█

█
█

█
█

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. An honorable discharge is a separation with honor. 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. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 provides that 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 (Medical Fitness Standards)).

3. 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 Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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; and 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.

4. 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.

5. The Updated 2025 VA Federal Benefits for Veterans, Dependents, Survivors, and Caregivers, 5 January 2025, provides that eligibility for most VA benefits is based on discharge from active military service under other than dishonorable conditions. Certain VA benefits require wartime service.

a. Basic Eligibility: A person who served in the active military, naval, space or air service, and who was discharged or released under conditions other than dishonorable,

including qualifying Reserve and National Guard members, may qualify for VA health care benefits.

b. Minimum Duty Requirements: Veterans who enlisted after 7 September 1980, or who entered active duty after 16 October 1981, must have served 24 continuous months or the full period for which they were called to active duty to be eligible. This minimum duty requirement may not apply to veterans discharged for hardship, early-out, or a disability incurred or aggravated in the line of duty, or those accessing care under certain special treatment authorities, such as treatment related to military sexual trauma.

//NOTHING FOLLOWS//