

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240004918

APPLICANT REQUESTS: on behalf of her deceased husband, a former service member (FSM):

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 May 1998
- Marriage License, [REDACTED]
- Certificate of Death, [REDACTED]
- Medical Documents (62 pages), which shows he was diagnosed and treated for post-traumatic stress disorder, major depressive disorder, anxiety, adjustment disorder, diabetes, and leg surgery

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 the FSM was sick with mental problems, but doctors did not diagnose him in the proper time. He was diagnosed with diabetes, bipolar disorder, and had a limb removed.
3. A review of the FSM's service record shows:
 - a. He enlisted in the Army National Guard (ARNG) of the United States on 19 July 1996.

b. Orders Number 17-19, dated 27 January 1997, ordered him to initial active duty for training, to complete basic and military occupational specialty training. His reporting date was 30 January 1997.

c. On 14 March 1997, he was discharged from the ARNG and assigned to the United States Army Reserve Control Group (Reinforcement) for completion of obligation.

d. A DA Form 4384 (Commander's Report of Inquiry/Unauthorized Absence), dated 14 April 1997, shows the FSM went on convalescence leave due to an injury received while in basic training. He was to return to his unit no later than 13 March 1997 and did not return. The company commander made several attempts to contact him at the phone number listed on his data sheet without success.

e. Court-martial charges were preferred against the FSM on 13 January 1998. His DD Form 458 (Charge Sheet) shows he was charged with being absent without leave from on or about 14 March 1997 to on or about 9 January 1998.

f. On 13 January 1998, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of court-martial.

g. On 26 March 1998, the immediate commander recommended approval and issuance of a discharge under other than honorable conditions.

h. On 17 April 1998, the separation authority approved the recommended discharge, directed he be reduced to the lowest enlisted grade, and issued an under other than honorable conditions discharge.

i. Accordingly, he was discharged under other than honorable conditions on 27 May 1998. His DD Form 214 shows he completed 5 months and 28 days of net active service this period. This form also shows in:

- Item 11 (Primary Specialty): None
- Item 12e (Total Prior Inactive Service): 6 months, 11 days
- Item 29 (Dates of Time Lost During This Period): 14 March 1997 – 8 January 1998

4. There is no indication the FSM applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

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

6. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The veteran is deceased. His wife is the applicant. She requests an upgrade to Honorable for her husband. She contends that PTSD and Other Mental Health were related to this request. The veteran's mental health conditions were reviewed under separate cover by ARBA Medical Advisor mental health specialist.

2. The ABCMR ROP summarized the veteran's record and circumstances surrounding the case. The veteran enlisted in the Army National Guard 19Jul1996. He entered active service for AIT on 29Jan1997. He was not awarded an MOS. He was on convalescent leave and did not return after. He was AWOL 19970314 to 19980108. He was discharged 27May1998 under provisions of AR 635-200, chapter 10 in lieu of trial by court-martial. His service was characterized as Under Other Than Honorable Conditions.

3. During the 15Dec2020 Hines Behavioral Health Services Initial Assessment and 19Jan2021 Psychiatric Evaluation, the veteran reported several medical conditions including childhood trauma; being shot in the stomach in 1988 with retained bullet; a shoulder injury (February 1997), a traumatic accident with head trauma; lower back pain; insulin dependent diabetes (diagnosed in 2010); left leg surgery as a result of an accident in June 2018; and mental health diagnoses.

4. By his report, the shoulder and head trauma occurred while he was in service. No service treatment records were submitted. However, JLV search revealed that the veteran was seen in the emergency room after traumatic injury on 17Feb1997. Left shoulder films at the time showed a minimally displaced fracture of the distal left clavicle. Follow up film on 25Feb1997 indicated that this was a comminuted fracture. There were no accompanying clinical visits. During the 2021 Psychiatric Evaluation, the veteran stated that a guy jumped on him and hurt his shoulder. He also stated that he sustained head trauma that resulted in a concussion during military training. It is unclear if the head trauma and shoulder injury were 2 separate incidents or the same. The record indicated that he went AWOL immediately following his convalescent period. The undersigned could not find documentation for a head injury in the available records.

5. Liberal Consideration guidance policy was considered. The veteran reported a head injury that had resulted in traumatic brain injury; however, there were no records showing that a TBI had been diagnosed. There were no service treatment records available for review. JLV search today did not show TBI diagnosis.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. There was objective evidence that the veteran sustained traumatic injury to the left shoulder. A head injury was reported; however, the available record does not show a TBI diagnosis.

(2) Did the condition exist, or did the experience occur during military service? Yes. Films affirmed the traumatic left shoulder injury occurred while in service. A head injury was reported; however, the available record does not show a TBI diagnosis.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The veteran had premilitary traumatic stressors that would make him more predisposed to have an augmented response to trauma while in service. A maladaptive response to trauma or the consequences (pain, change in health, perceived impact on career, etc.) could result in AWOL behavior. A nexus was found between the veteran's traumatic shoulder injury and his not returning to the unit as scheduled/directed when his allotted time for convalescence was complete is conceivable. Available records did not show that a TBI had been diagnosed. However, under Liberal Consideration, the veteran's contention is sufficient for the Board's consideration.

BEHAVIORAL HEALTH REVIEW:

a. Background: The FSM, a former service member's FSM) spouse, is applying to the ABCMR requesting consideration of an upgrade to the FSM's characterization of service from under other than honorable conditions (UOTHC) to honorable. She 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 FSM enlisted into the Army National Guard (ARNG) on 19 July 1996, and he was ordered to active duty for basic training on 30 January 1997.
- A DA Form 4384 (Commander's Report of Inquiry/Unauthorized Absence), dated 14 April 1997, shows the FSM went on convalescence leave due to an injury received while in basic training. He was to return to his unit no later than 13 March 1997 and did not return.

- Court-martial charges were preferred against the FSM on 13 January 1998. His DD Form 458 (Charge Sheet) shows he was charged with being absent without leave from on or about 14 March 1997 to on or about 9 January 1998. He requested separation in lieu of court-martial.
- The FSM was discharged on 27 May 1998. His DD Form 214 shows he completed 5 months and 28 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 FSM's file. The FSM's spouse asserts that the FSM was sick with mental problems, but he was not properly diagnosed at the time. She stated he had diagnoses of Diabetes and Bipolar Disorder. She indicated PTSD and "other mental health" as issues or conditions related to the request. The application included an Initial Assessment by Hinds Behavioral Health Services dated 15 December 2020, which showed that the FSM reported depression, nightmares, irritability, and "PTSD after military service," and he indicated he was involved in a traumatic accident where he had head trauma. He reported a history of childhood abuse and non-military related trauma in adulthood. He was diagnosed with PTSD and Major Depressive Disorder, single episode, severe with psychosis and was started on an antidepressant medication. Another Psychiatric Diagnostic Evaluation was completed on 13 October 2022 where he reported similar symptoms, which were exacerbated by his physical health and inability to work. Documentation from the [REDACTED] Medical Center showed that the FSM was admitted on 30 April 2022 and discharged on 3 May 2022 after presenting to the ER with hyperglycemia and a manic-like presentation. He was diagnosed with Bipolar Disorder and started on medications. It was noted that he had a history of "leaving without telling her (wife)," but this was his first psychiatric hospitalization. There was insufficient evidence that the FSM 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 that the FSM's spouse initiated homeless services in January 2023, and the FSM had routine case management for this service through November 2023 when he passed away.

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 FSM had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the FSM have a condition or experience that may excuse or mitigate the discharge? Yes. The FSM's spouse asserts that he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no records of any

mental health symptoms or diagnoses from his time in service, but the application included records dating back to 2020 that show diagnoses of PTSD, Major Depressive Disorder, and Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the spouse of the FSM asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no evidence of any mental health symptoms or diagnoses while on active service, and the length of time between the FSM's misconduct and his initial diagnoses of PTSD, Major Depressive Disorder, and Bipolar Disorder makes it difficult to draw a nexus between his mental health condition and his misconduct related to being AWOL. While Bipolar Disorder can cause erratic or manic behavior, there is insufficient evidence, beyond self-report, that the FSM was experiencing a mental health condition while on active service. However, the FSM's spouse contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military record, the Board found that relief was not warranted. The Board carefully considered the SM'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, SM's available military records and medical review, the Board concurred with the advising opinion of the Agency Medical and Behavioral Health Advisor that there is insufficient evidence to support that the SM had a condition or experience that mitigates his misconduct specifically his AWOL while on convalescent leave.

Kurta Questions:

(1) Did the FSM have a condition or experience that may excuse or mitigate the discharge? Yes. The FSM's spouse asserts that he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no records of any mental health symptoms or diagnoses from his time in service, but the application included records dating back to 2020 that show diagnoses of PTSD, Major Depressive Disorder, and Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the spouse of the FSM asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no evidence of any mental health symptoms or diagnoses while on active service, and the length of time between the FSM’s misconduct and his initial diagnoses of PTSD, Major Depressive Disorder, and Bipolar Disorder makes it difficult to draw a nexus between his mental health condition and his misconduct related to being AWOL. While Bipolar Disorder can cause erratic or manic behavior, there is insufficient evidence, beyond self-report, that the FSM was experiencing a mental health condition while on active service. However, the FSM’s spouse contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration her contention is sufficient for the board’s consideration.

2. The Board acknowledged the applicant’s contention that PTSD and other mental health issues influenced the SM’s actions. However, the available documentation does not establish a sufficient evidence to justify an upgrade of the service member’s discharge. Based on the preponderance of evidence and the medical and behavioral health advisory opinion, the Board determined that relief was not warranted and denied the request.

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
■	■	■	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. 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 other than honorable conditions 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.

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 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.

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. Section 1556 of Title 10, United States 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.

6. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

//NOTHING FOLLOWS//