

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240005015

APPLICANT REQUESTS:

- An upgrade of his general under honorable conditions discharge to honorable
- Restore his rank to private first class (PFC)/E-3

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

- DD Form 149 (Application for Correction of Military Record)
- Medical documents (17 pages)

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, in effect:

a. The Article 15s that were leveled against him were the direct result of personality changes he experienced after sustaining a traumatic brain injury (TBI) during a parachute jump into 1 RRC in 1988. He was transported by medical evacuation (MEDEVAC) and treated for a concussion. For months afterward, he suffered from daily headaches, blurred vision, and an inability to concentrate. He frequently went on sick call but was treated unsuccessfully.

b. After it became apparent that he wasn't improving, he should have been medically discharged at his rank at the time, E-3. Instead, he faced harassment from an NCO determined to punish him for "abusing" sick call, which led to the first Article 15 in October 1988, resulting in a loss of pay. The second Article 15 was issued for being 15 minutes late for company duty on the last day of his previous punishment. At that time, it was decided to impose a Field Grade Article 15. This was all designed to separate him from military service in the most humiliating manner possible. He approached his

platoon sergeant and expressed that since he was not getting better, he should be medically discharged, as he felt he was only a burden to the unit. Two NCOs in his chain of command decided they would either shape him up or push him out.

3. The applicant provides medical documents dating back to 1988 (17 pages).

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 29 October 1986.

b. The applicant accepted nonjudicial punishment (NJP) on two separate occasions as follows:

(1) On 3 October 1988, for derelict in the performance of his duties on or about 1 and 2 September 1988; fail to go at the time prescribed to his appointed place of duty on or about 14 September 1988. His punishment consisted of a reduction to E-2.

(2) On 16 November 1988, fail to go at the time prescribed to his appointed place of duty on or about 16 October 1988; he was derelict in the performance of those duties in that he negligently failed to pull proper PMCS on or about 24 October 1988. His punishment consisted of a reduction from E-2 to E-1.

c. On 4 January 1989, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 13-2, for unsatisfactory performance. Specifically, the applicant received two Article 15s and numerous counseling statements used in an attempt to correct his deficiencies.

d. The applicant acknowledged receipt of the commander's intent to separate him on 5 January 1989. He consulted with legal counsel who advised him of the basis for the contemplated separation action for unsatisfactory performance, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He elected not to submit a statement in his own behalf. He acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him
- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the

ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

e. On 17 January 1989, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 13-2 for unsatisfactory performance, and directed the applicant be issued a General Discharge Certificate.

f. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 27 January 1989, under the provisions of AR 635-200, chapter 13, unsatisfactory performance, and character of service of general under honorable conditions. He completed 2 years, 2 months, and 29 days of net active service this period. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) reflects:

- Parachutist Badge
- Expert Badge, M-16
- Expert Badge, Hand Grenade

5. AR 635-200, in effect at the time, states action will be taken to separate a member due to unsatisfactory performance when in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future.

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

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 27 January 1989 under honorable conditions (general) discharge and restoration of his rank to PFC (E3). He states in part:

“The Article 15's that were leveled against me were the direct result of personality changes that I suffered after suffering a TBI on a parachute jump into NTC [National Training Center] in 1988. I was transported by medevac and treated for the concussion. For months after, I suffered from daily headaches, blurred vision, and an inability to concentrate. I went on sick call constantly and was treated, unsuccessfully.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 29 October 1986 and was discharged under honorable conditions (general) on 27 January 1989 under the separation authority provided by paragraph 13-2 of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988): Separation for Unsatisfactory Performance.

d. Medical documentation shows the applicant sustained a concussion in a hard parachute landing fall (PLF) of 4 August 1988. He was subsequently diagnosed with and treated for post-concussive syndrome thru at least November 1988. On 19 October 1988, a psychiatrist wrote:

“Patient being followed for post-traumatic headaches and stress; adjusting to unit with difficulty. Patient began on nortriptyline, 25 mg each night, to increase to 75 mg each night for pain relief.”

e. In September and October of 1988, the applicant received Article 15's for failures to repair and dereliction of duty.

f. JLV shows the applicant has VA service-connected disability ratings for traumatic brain disease and migraine headaches.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: TBI

(2) Did the condition exist or experience occur during military service? YES: Medical documentation shows the sustained a concussion while in the Army and the injury has been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge?  
YES: Residuals of a TBI include impulsivity and poor decision making/judgement.  
Thus it fully mitigates the UCMJ violations which led to his separation for unsatisfactory performance.

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation, the guidance concerning liberal consideration and the following findings outlined in the medical review:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: TBI
- (2) Did the condition exist or experience occur during military service? YES.
- (3) Does the condition or experience actually excuse or mitigate the discharge? YES.

the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable.

However, based upon the evidence showing the applicant was reduced in grade to Private/E2 during an Article 15 proceeding and liberal consideration guidance not impacting the restoration of rank, the Board concluded there was insufficient evidence to restore the applicant's rank to PFC/E3.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to restoring the applicant’s rank to PFC/E3.

**//SIGNED//**

**X**

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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 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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.

b. Paragraph 3-7b provides that 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.

c. Chapter 13 of that regulation provides, in pertinent part, if it is clearly established that the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Further stating it is likely that the Soldier will be a disruptive influence in present or future duty assignments and his ability to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

3. 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/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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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//