

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240005526

APPLICANT REQUESTS: an upgrade of his dishonorable discharge and placement on the permanent disability retired list (PDRL),

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit 1 through Exhibit 24, Army Service Records (104) pages
- Exhibit 25 through Exhibit 28, post-service accomplishments
- Exhibit 29 and Exhibit 30, statements of support (2), dated 23 June 2023 and 21 August 2023
- Exhibit 31 through Exhibit 35, Service Treatment Records
- Exhibit 36 and Exhibit 37, Comprehensive Clinical Evaluation Program Questionnaire and Department of Veterans Affairs (VA) Rating Decision, dated 10 February 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. Several of the documents in the applicant's service record were illegible. Among the illegible documents were several favorable evaluations, commendations, and awards. The applicant requests his petition be given the benefit of any doubt due to the illegibility of his records.

3. Counsel states:

a. The applicant was a stellar Soldier, who displayed a high level of utility to the service and served multiple enlistments with honorable discharges. Eventually he became a unit chaplain. During his 2000-2004 enlistment period, he was accused of several violations of the Uniform Code of Military Justice. At his general court-martial, he maintained his innocence and insisted the allegations against him were false and

orchestrated by individuals who had reason to fabricate information against him. He was sentenced to one year confinement and dismissal from service. Major General [REDACTED] removed the sentence extending to dismissal, and he was released from active duty with a dishonorable discharge. He reenlisted and continued to serve until his honorable discharge in 2007.

b. The applicant has a long documented history of medical conditions during his service. His unit erred in not sending him before a full Medical Evaluation Board (MEB). The multitude of his conditions were not considered prior to his discharge, despite reporting the conditions during his separation physical. Had he been sent before the MEB, he would have met the service-connected disability percentage to satisfy retirement. He now has a 70 percent (%) disability rating with the VA. The only just recourse would be to use the VA percentages to find that he would have been eligible for medical retirement since his fitness for duty was in question.

c. Since his final separation, the applicant has continued his pursuit of higher education. He continues to support Veterans in a civilian capacity. He obtained his doctorate, published several books, and started a ministry which supports Veterans. He is looking to clear his good name after being targeted due to the jealousy of others and accused of offenses he did not commit. His records should reflect the honorable man that he has always been.

4. The applicant served an honorable period of enlisted service in the Regular Army, from 8 February 1978 through 17 September 1985. He was awarded military occupational specialties 91V (Respiratory Specialist) and 91B (Medical Specialist). The highest rank he attained was specialist fifth class/E-5.

5. Following a break in service, he enlisted in the U.S. Army Reserve (USAR) on 20 February 1988 for a 3-year period and subsequently reenlisted on 25 May 1988 for a 6-year period.

6. He was ordered to active duty on 11 December 1990 in support of Operation Desert Shield/Desert Storm. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty upon completion of his period of active duty, with an honorable characterization of service. He completed 7 months and 15 days of net active service and was authorized or awarded the following:

- Army Service Ribbon
- National Defense Service Medal with bronze service star
- Army Commendation Medal
- Army Good Conduct Medal (3rd award)
- Noncommissioned Officer Professional Development Ribbon
- Overseas Service Ribbon (2)

- Humanitarian Service Medal
- Southwest Asia Service Medal with two bronze serve stars
- Army Lapel Button

7. The applicant accepted an appointment as a Reserve Commissioned Officer of the Army, in the rank of second lieutenant, on 10 November 1997. He was ordered to active duty for training (ADT) on 1 June 1998 for the purpose of completing the Chaplain Officer Basic Course. Upon completion, he was released from ADT and returned to the control of the USAR.

8. On 4 May 2000, the applicant was ordered to active duty, in the rank/grade of captain/O-3, for the purpose of fulfilling his active army requirement as an obligated volunteer officer for three years.

9. Before a general court-martial, at Fort Stewart, GA, on 22 May 2003, contrary to his pleas, the applicant was found guilty of violating a lawful general regulation (soliciting fundraising), signing three false official records with intent to deceive, larceny, making and uttering a worthless check by dishonorably failing to maintain sufficient funds, making two fraudulent claims against the United States, conduct unbecoming an officer and gentleman, and failing to pay a debt, between on or about 4 September 2000 and 29 October 2002. He was sentenced to confinement for one year; and to be dismissed from the service. The sentence was approved on 27 February 2004 and except for the part of the sentence extending to dismissal from service, was ordered executed.

10. The applicant was released from active duty and transferred to the Individual Ready Reserve on 1 March 2004, under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 5-17, by reason of court-martial. His DD Form 214 shows his character of service was dishonorable with separation code JJD. He completed 2 years, 11 months, and 2 days of net active service, with lost time from 29 May 2003 to 29 February 2004. He was authorized or awarded the following:

- Army Good Conduct Medal (3rd award)
- National Defense Service Medal
- Southwest Asia Service Medal with three bronze serve stars
- Humanitarian Service Medal
- Kuwait Liberation Medal (Saudi Arabia)
- Kuwait Liberation Medal (Kuwait)
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Noncommissioned Officer Professional Development Ribbon (3rd award)

11. On 2 September 2004, an MEB recommended the applicant be referred to a Physical Evaluation Board (PEB) for pulmonary sarcoidosis, chronic stable condition. On 13 September 2004, the applicant agreed with the findings and recommendations.

12. On 22 February 2006, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence. The conviction became final on 30 October 2006 when the U.S. Court of Appeals for the Armed Forces denied the applicant's petition for a grant of review.

13. The Assistant Secretary of the Army for Manpower and Reserve Affairs approved the court-martial sentence on 8 January 2007 and ordered the dismissal executed.

14. Orders D-04-708707, issued by the U.S. Army Human Resources Command, St. Louis, MO, dated 16 April 2007, shows the applicant was honorably discharged from the USAR, effective 23 February 2007.

15. On 13 May 2008, the ABCMR considered the applicant's request to overturn his general court-martial conviction; that his spouse be paid the automatic forfeiture of his pay and allowances; and that he be paid compensation based upon the findings of a 2004 Medical Evaluation Board. After careful consideration, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. His request for relief was denied.

16. The applicant provides the following:

a. 104 pages of Army Service Records are summarized, in pertinent part, in the Record of Proceedings (ROP) above.

b. 13 pages of documents highlight some of the applicant's post-service accomplishments, to include his resume; a photograph of him receiving his doctorate degree; and several self-authored publications regarding the mental health struggles of Veterans, which resulted in him beginning his own ministry to provide counseling for Veterans dealing with homelessness. His largest project was a white paper proposal, which involved a large-scale outreach effort for homeless Veterans and their war-returning active duty comrades.

c. In two statements of support, dated 23 June 2023 and 21 August 2023, the authors attest to the applicant's integrity, responsibility, and high morals which he demonstrates while working through difficult challenges. He always looks out for the unfortunate person. It is admirable to pursue a life of positive contribution to society. He does not request more than what is due to him. He is an honest person and trustworthy friend.

d. 16 pages of Service Treatment Records will be summarized, in pertinent part, in the "MEDICAL REVIEW" section of this ROP.

e. A Comprehensive Clinical Evaluation Program Questionnaire and VA Rating Decision, dated 10 February 2023, shows the applicant has applied for VA benefits. The VA established he is a Veteran of the Gulf War Era and Peacetime. He has a combined service connected disability rating of 50% for post-traumatic stress disorder (PTSD); and bronchitis, asthma, sarcoidosis; and pulmonary fibrosis.

17. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

18. Regulatory guidance provides a Soldier will receive a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

19. 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/or 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 1 March 2004 discharge characterized as dishonorable and, in essence, a referral to the Disability Evaluation System (DES). He states through counsel:

"[Applicant] respectfully submits this brief in support of his application to change his discharge status for his 2000 to 2004 enlistment period from "Dishonorable Discharge" to one of the following: "Honorable", "General Under Honorable Conditions", or "Clemency" in the alternative. The instant brief is for the purpose of his Honorable Board's consideration of evidence while conducting a records review of the applicant's discharge on the basis of clemency.

Additionally, applicant further petitions that he be assigned to the Permanent Disability Retired List (PDRL) for his 2007 discharge period along with an amendment to his discharge order to reflect PDRL status given his medical circumstances at the time of his discharge from the Army.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 for the period of service under consideration shows the former USAR Officer entered this period of active service in the regular Army on 28 June 2000 and was discharged on 1 March 2004 under provisions in paragraph 5-17 of AR 600-8-24, Officer Transfers and Discharges (3 February 2003): Rules for processing dismissal of an officer due to general courts-martial proceedings.

d. Orders published 16 April 2007 by the U.S. Army Human Resources Command show the applicant was honorably discharged from the USAR effective 23 February 2007 under the authority provided in AR 135-175, Separation of Officers. They neither reference a chapter or paragraph nor state the authority for his discharge.

e. The issue of a discharge upgrade for his 2004 discharge is beyond the scope of this advisory. The effect any mental health disorder(s) (applicant has VA service-connected PTSD) may have had on the actions leading to his dishonorable discharge will be addressed in a separate behavioral health advisory.

f. Counsel states the applicant should have been permanently retired for physical disability rather than dishonorably separated from the regular Army in 2004 and also when he was discharged from the USAR in 2007.

g. A General Court Martial Order dated 27 February 2004 shows the applicant was found guilty of one (1) specification of wrongfully soliciting fundraising on behalf of a civilian entity, two (2) specifications of signing an official record with the intent to deceive, one (1) specification of stealing military property valued at more than \$500, one (1) specification of uttering a worthless check, two (2) specifications of presenting false claims to the government for approval or payment, one (1) specification of wrongful use of his Chaplain’s assistant official government travel care to make multiple purchases, and one (1) count of being indebted to the US Government in the sum of \$2142.00 for monies received under false claim of lost property.

h. The applicant was placed on a permanent duty limiting physical profile for pulmonary sarcoidosis on 17 August 2004. Medical Evaluation Board Proceedings (DA Form 3947) show the applicant’s chronic pulmonary sarcoidosis (stable) was

determined to fail medical retention standards on 2 September 2004. On 13 September 2004, the applicant agreed with the board's findings and recommendation.

i. No further documents addressing his medical evaluation board or further DES processing were identified. Paragraph 4-4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990), states officers who may be separated under other than honorable conditions will undergo simultaneous processing with the final decision made by SAMR-RB (Assistant Secretary of the Army (Manpower and Reserve Affairs – Review Boards) on behalf of the Secretary of the Army:

4-4. Commissioned or warrant officers who may be separated under other than honorable conditions:

a. A commissioned or warrant officer will not be referred for disability processing instead of elimination action (administrative separation) that could result in separation under other than honorable conditions. Officers in this category who are believed to be unfit because of physical disability will be processed simultaneously for administrative separation and physical disability evaluation.

b. Commanders exercising general court-martial authority will ensure that the foregoing actions processed together are properly identified and cross-referenced. The administrative separation will be forwarded to the Commander, PERSCOM, ATTN: TAPC-OPP-M, Alexandria, VA 22332-0418.

c. The Commander, PERSCOM, will refer the entire file, including both courses of action, to the Office of the Secretary of the Army, ATTN SAMR-RB, Washington DC 20310-3073 for necessary review. The SA will decide the proper disposition of the case.”

j. There was no evidence identified that his case was forwarded to a Physical Evaluation Board or that the above requirement for simultaneous processing was executed. However, the ARBA legal advisor's brief for AR20070015649 states the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA-MRA) acted after his appeal was denied:

“Subsequently, on 22 February 2006, the Army Court of Criminal Appeals (ACCA) affirmed the findings of guilty and the sentence as approved. On 30 October 2006, the Court of Appeals for the Armed Forces (CAAF) denied the applicant's petition for a grant of review, thereby declining to hear his appeal. This meant that his appellate

process was completed at that point, since an appeal to the Supreme Court is not permitted unless CAAF first agrees to hear the appellant's case.

Accordingly, on 8 January 2007, the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA-MRA) took final action on the applicant's GCM sentence. That is, Article 71(b), UCMJ, requires the Secretary of the Army or his designee to approve the dismissals of commissioned officers, cadets, and midshipmen before the dismissals can be executed. Therefore, the ASA-MRA, as the appropriate designee, explicitly approved the sentence as affirmed by ACCA and ordered the dismissal to be executed. He further ordered that the applicant would cease to be a member of the Army at midnight on 23 February 2007."

k. She also addressed his potential for a referral based on his 23 February 2007 discharge:

"The applicant now asserts that he was honorably discharged on 17 February 2007. However, the DD Form 256A and separation orders that he offers are trumped by the decisions issued by ACCA and CAAF affirming his GCM sentence (including the dismissal), as well as by the final court-martial order signed by the ASA-MRA that ordered the dismissal to be executed. That is, the ACCA and CAAF decisions and final court-martial order are undoubtedly official and trustworthy, but the same cannot be said for the documents offered by the applicant without independent evidence to corroborate their authenticity ...

Sixth, the applicant argues that he should receive disability compensation in an amount over \$180,000, since an MEB found him unfit and recommended his case be forwarded to a Physical Evaluation Board in 2004. However, subparagraph 1-23a of AR 600-8-24 (Officer Transfers and Discharges) states that an officer may not be referred for or continue disability processing if he is "under investigation for an offense chargeable under the Uniform Code of Military Justice (UCMJ) that could result in dismissal or punitive discharge"

It then notes that there are three exceptions to this rule, which would allow the officer in question to begin or continue with disability processing: if the investigation ends without charges; if the court-martial convening authority dismisses the charges; or if the court-martial convening authority refers the charges to a court-martial that cannot adjudge a punitive discharge. See AR 600-8-24, dated 21 July 1995, at paragraph 1-23a ...

In the applicant’s case, he was not only pending court-martial, but he had already been found guilty and sentenced to a dismissal in 2003 {sic}, before his MEB even made its recommendation in 2004. With a dismissal, he obviously could not qualify for any of the exceptions allowed by AR 600-8-24 and therefore was no longer eligible for any kind of disability compensation or disability retirement. It can only be assumed that both the MEB and PEB were unaware of this at the time they processed his medical case, but discovered his ineligibility before the Physical Disability Agency acted on a separation date.”

I. It is the opinion of the ARBA Medical Advisor there is insufficient probative evidence to warrant either a discharge upgrade or a referral of his case to the DES.

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 multiple acts of criminal activity leading to court-martial and the findings of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s military record.

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.

3/31/2025


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 (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. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).
3. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
 - a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.
 - b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout

his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

4. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

5. 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 that 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.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of AR 635-200, Chapter 5.

7. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is

unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It states, in part:

a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

8. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes policies and procedures governing transfer and discharge of Army officer personnel.

a. Paragraph 5-17 states an officer convicted and sentenced to dismissal as a result of general court-martial proceedings will be processed pending appellate review. A Reserve Component officer may be released from active duty pending completion of the appellate review or placed on excess leave in lieu of release from active duty.

b. Paragraph 1-22a provides that an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty.

c. Paragraph 1-22b provides that an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

10. 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 PTSD; 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.

11. 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, 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.

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//