

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240005550

APPLICANT REQUESTS: an upgrade of his character of service to either honorable or under honorable conditions (general).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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. The applicant states in pertinent part that he has proven that he is now a better person since departing the military. He further notes that he served in excess of 2 years and Post-Traumatic Stress Disorder (PTSD) was a contributing factor to the actions which resulted in his administrative discharge from the Army.
3. A review of the applicant's available service records reflects the following:
 - a. On 22 January 1997, the applicant enlisted in the Regular Army for 3 years with duty in military occupational specialty 11M (Fighting Vehicle Infantryman).
 - b. On or about 19 July 1998, the applicant did absent himself without leave (AWOL) from his organization and remained as such until on or about 29 October 1998 when he was apprehended by civilian authorities and returned to military control.
 - c. On 19 November 1998, the applicant voluntarily requested to be discharged in lieu of trial by Court-Martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 10. The applicant acknowledged that he may request discharge in lieu of trial by Court-Martial because of the following charges which have been preferred against him under the Uniform Code of Military Justice (UCMJ), each of which authorizes the imposition of a bad conduct or dishonorable discharge: Article 86: AWOL (19 July 1998 – 29 October 1998). The

applicant's request was subsequently approved with the direction that he be reduced to private (PVT)/E-1 in accordance with AR 600-8-19 (Enlisted Promotions and Reductions) and awarded an under other than honorable conditions character of service. The applicant declined to have a physical evaluation prior to separation. He understood and was afforded:

- Making the request of his own free will and was not subject to any coercion
- The opportunity to consult with counsel
- He could be discharged under conditions other than honorable
- He did not submit statements on his own behalf

d. On 5 April 1999, the U.S. Army Field Artillery School and Fort Sill issued Orders Number 095-0133 reassigning the applicant to the transition point pending separation processing.

e. On 12 April 1999, the applicant was discharged from military service. DD Form 214 reflects the following:

- Item 4a./b. (Grade, Rate or Rank/Pay Grade): PV1/E-1
- Item 12c (Net Active Service this Period): 1 year, 11 months, and 9 days
- Item 18 (Remarks): Excess Leave 144 days (20 November 1998 – 10 April 1999; Member has not Completed First Full Term of Service
- Item 24 (Character of Service): Under Other than Honorable Conditions
- Item 25 (Separation Authority): AR 635-200, Chapter 10
- Item 28 (Narrative Reason for Separation): In Lieu of Trial by Court-Martial
- Item 29. (Dates of Time Lost During this Period): Under 10 U.S.C. 972: 19 July 1998 – 28 October 1998

4. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general) or honorable. He 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 applicant enlisted into the Regular Army on 22 January 1997.

- The applicant was AWOL from 19 July 1998 to 29 October 1998, and he voluntarily requested to be discharged in lieu of trial by Court-Martial under the provisions of Army Regulation (AR) 635-200, Chapter 10.
- The applicant was discharged on 12 April 1999 and was credited with 1 year, 11 months, and 9 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD as a mitigating factor in his misconduct. The application did not contain any medical or mental health records. There was insufficient evidence that the applicant 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 no history of mental health related treatment or diagnoses.

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 applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant 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. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and the applicant did not provide any mental health records. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

4/1/2025

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, 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 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. AR 635-200 (Personnel Separations Enlisted Personnel) in effect at the time 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 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.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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.

4. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 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; traumatic brain injury (TBI); sexual assault; or sexual harassment. 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.

//NOTHING FOLLOWS//