

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240005676

APPLICANT REQUESTS: upgrade of his undesirable discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 9 April 2024
- Self-authored statement, 5 April 2024
- DD Form 214 (Report of Separation from Active Duty), 14 January 1976

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 indicates on his DD form 149, that mental health conditions or issues are related to his request. He states:

a. After enlisting in the U.S. Army, he was assigned to a unit in Sweigert, Germany and began working as a training clerk. The captain of his unit unjustly and unlawfully violated his civil rights.

b. A Soldier injured his legs and feet while he was lying on his bunk bed. The action officer in charge ordered him to apologize for telling the Soldier to watch where he was walking. He told the officer he was defending himself. It was wrong to give him nonjudicial punishment for defending himself if he was attacked.

c. Once he was discharged, he could not think, work, or eat. He experienced nightmares, anxiety, and pressure. The undesirable discharge was a pressure tactic. He hopes the Board will grant his request to seek correction and upgrade his wrongful discharge.

3. A review of the applicant's service records reflect:

- a. On 2 April 1974, he enlisted in the Regular Army for 2 years.
- b. On 15 August 1974, he was assigned to Battery B, 2nd Battalion, 39th Field Artillery, Germany.
- c. On 30 October 1974, he was promoted to private first class.
- d. On 14 July 1974, he accepted nonjudicial punishment (NJP) under provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for assaulting Sergeant (SGT) H___ and for willfully disobeying a lawful order from SGT H___ on 14 May 1975. His punishment consisted of reduction to private 2 and forfeiture of \$100.00 for 2 months. He did not appeal this punishment.
- e. On 9 December 1974, he accepted NJP under the provisions of Article 15 of the UCMJ for disobedience of a lawful order from SGT W___ on 2 December 1974. His punishment consisted of forfeiture of \$75.00 for 1 month and 14 days extra duty. He did not appeal this punishment.
- f. The DD Form 458 (Charge Sheet) listing the charges and specifications, if any, leading to referral to a court-martial, his request for discharge for the good of the service under the provisions of Army Regulation 635-200, Chapter 10; and his commander's recommendation, are not available in his records.
- g. On 24 December 1975, he underwent a medical examination and gave a report of medical history in connection with Chapter 10 proceedings. The examining physician noted he was in good health and he indicated further with his signature that he was in good health.
- h. On an unspecified date, in connection with his medical examination, he underwent a mental status evaluation. The examining psychiatrist noted he had normal behavior, was fully alert and fully oriented; had a level mood with clear thinking process and normal ideation; his memory was fair. The medical officer further noted he was able to distinguish right from wrong and was able to adhere to the right and had the mental capacity to participate in Board proceedings. He met the retention standards prescribed in Chapter 3 of Army Regulation 40-501.
- i. On 2 December 1975, the separation authority approved his discharge for the Good of the Service with issuance of an Undesirable Discharge Certificate and directed he be reduced to the lowest rank.
- j. On 14 January 1976, he was discharged under other than honorable conditions. His DD Form 214 shows he completed 1 year, 9 months, and 13 days of net active service this period with no time lost. He was awarded the National Defense Service

Medal and the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16). The authority and reason for discharge were Army Regulation 635-200, Chapter 10 with a separation program designator code of KFS and reenlistment code 3.

4. On 8 April 1983, the Army Discharge Review Board determined his discharge was both proper and equitable and voted to deny relief. The OSA Form 72 (Office of Secretary of the Army), case report shows on page 3, that on 30 September 1975, he was charged with one count of intent to obtain money, one count of communicating a threat to do bodily harm and one count of assault.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions that mitigate his misconduct. 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 02 April 1974; 2) On 14 July 1974 he received an Article 15 for assaulting an NCO and disobeying a lawful order on 14 May 1975 and a second Article 15 on 09 December 1974 for disobeying a lawful order on 02 December 1974; 3) The Charge Sheet, if any, leading to a referral to a court-martial, the applicant's request for discharge for the good of the service, Chapter 10, and his commander's recommendation were not available in his records; 4) The applicant was discharged on 14 January 1976, Chapter 10- In lieu of trial by court-martial. His character of service was under other than honorable conditions. He completed 1 years, 9 months, and 13 days net active service; 5) On 8 April 1983, the Army Discharge Review Board reviewed and denied the applicant's request for an upgrade. There was military record available that the applicant on 30 September 1975, was charged with one count of intent to obtain money, one count of communicating a threat to do bodily harm and one count of assault.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions while on active service. On 24 December 1975, he was cleared by a medical provider for Chapter 10 proceedings. On an unspecified date, he also underwent a mental status evaluation which also cleared him from a mental health perspective, for separation and was not diagnosed with a mental health condition.

d. A review of JLV did not reveal any additional results or documentation. The applicant has not been diagnosed with a service-connected mental health condition and does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health 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 misconduct? Yes, the applicant asserts he experienced mental health conditions including anxiety that mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health symptoms while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with any service-connected mental health condition. The applicant did engage in some avoidant or erratic misconduct such as not following orders, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, the applicant was repeatedly engaged in the misconduct of assault or threat of bodily harm. There is no nexus between this type of misconduct and the applicant's reported mental health conditions in that: 1) These types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions and; 2) The applicant's reported mental health conditions broadly do not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense policy for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his military record, the frequency and nature of his misconduct, the evidence of the court-martial charges against him that included assault, his request for separation and the character of service

he received upon discharge. The Board considered the applicant's statement regarding mental health conditions, the absence of evidence of an in-service or post-service diagnosis and the review and conclusions of the medical advisor. The Board found: (1) the applicant asserts he experienced mental health conditions including anxiety that mitigate his misconduct; (2) the applicant asserts he experienced mental health symptoms while on active service; (3) insufficient evidence beyond self-report that the applicant has been diagnosed with any service-connected mental health condition and that the misconduct was not part of the natural history or sequelae of the applicant's reported mental health conditions. Based on a preponderance of evidence, the Board determined that the applicant's character of service was not in error or unjust and that there was insufficient evidence of mitigating factors to warrant an upgrade as a matter of liberal consideration.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX:	XX:	XX:	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.



X //SIGNED//

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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. 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. 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 provided that a member who had committed an offense or offenses for which, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "For the Good of the Service," and the authority, Army Regulation 635-200, Chapter 10.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised Post-Traumatic Stress Disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

6. 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. 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//