

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20240005788

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Character Reference Letter
- Two DA Forms 4187 (Personnel Action)

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 during his time in the military, he suffered a brain bleed that resulted in him being hospitalized at Walter Reed Army Medical Center. He also had serious family issues that occurred causing a sudden divorce and this caused great mental anguish. At the time of discharge, he was not notified of a time limit. The discharge documentation stated he was not available to sign; however, he was states he was available.
3. The applicant provides the following documents:
  - a. A Character Reference Letter that discusses how the applicant was a model soldier with awards and accolades during his first enlistment. It was during his second tour that things went awry. He suffered some extreme family related problems. This all aligned with the brain bleed. It was impossible to seek out mental health resources in the 1970's. However, the applicant was the most dedicated and trusting veteran. He does not hesitate to help anyone in need.

- b. Two DA Forms 4187 that show the applicant was hospitalized and was transported between Ireland Army Hospital to Walter Reed Army Medical Center (WRAMC)
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 3 January 1975.
  - b. His DA Form 2-1 (Personnel Qualification Record) shows he served in:
    - Germany from 11 January 1977 to 28 December 1978
    - Korea from 1 June 1980 to 18 March 1981
  - c. On 11 December 1982, the applicant was apprehended and taken to the county jail for driving under the influence (DUI).
  - d. The applicant received a Letter of Reprimand dated 3 January 1982, because of being stopped by civil authorities on 11 December 1982 and subsequently charged with driving under the influence. He acknowledged the same day.
  - e. On 10 January 1983, a recommendation for bar to reenlistment certificate was approved.
  - f. On 10 February 1983, he accepted nonjudicial punishment for absent without authority from the unit 14 January 1983 to 15 January 1983.
  - g. Two DA Forms 4187 show the applicant was absent without leave (AWOL) from 11 February 1983 and dropped from the rolls on 12 March 1983.
  - h. On 26 May 1983, the applicant was counseled on the requirements for completion of medical examination prior to separation for the good of the service. The applicant elected not to undergo a medical examination prior to discharge.
  - i. On 27 May 1983, the applicant submitted an admission of AWOL for administrative purpose. He was AWOL from 11 February 1983 to 20 May 1983.
  - j. On 27 May 1983, the applicant was admitted to the U.S. Ireland Army Hospital documented as in the line of duty (LOD) for 14 days.
  - k. DA Form 4187 dated 14 June 1983, shows the applicant was transported between Ireland Army Hospital to Walter Reed Army Medical Center (WRAMC).

- I. The complete facts and circumstances surrounding the applicant's separation proceedings are unavailable for the Board to review.
  - m. On 13 July 1983, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 years and 8 months of active service with 102 days of lost time. He was assigned separation code KFS and JFS and the narrative reason for separation listed as "For the Good of the Service -In Lieu of Court-Martial," with reentry code 3B, 3, 3C. It also shows he was awarded or authorized:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal
- Non-Commission Officer (NCO) Professional Development Ribbon (Basic Level)
- Good Conduct Medal

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
5. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

6. **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 (EMR – AHLTA and/or MHS Genesis), 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 13 July 1983 discharge characterized as under other than honorable conditions. He has not

requested Disability. He has indicated on his DD 149 that TBI (traumatic brain injury) and other mental health conditions are issues related to his request. He states:

“During my time in the military, I suffered a brain bleed that resulted in my being hospitalized at Walter Reed Army Medical Center. There were also serious family issues that happened causing a sudden divorce and this caused great mental anguish.”

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 31 July 1978 and was discharged under other than honorable conditions on 13 July 1983 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 May 1982): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty or imminent danger pay area. The DD 214 shows three periods of time lost: 11-13 February 1982, 14 January 1983, and 11 February 1983 thru 19 May 1983.

d. The behavioral health aspects of the applicant’s claim have been addressed in a separate advisory opinion from an ARBA behavioral health advisor.

e. Part II of his Personnel Qualification Record notes that his first period of lost time (11-13 February 1982) was due to incarceration by civilian authorities after having been arrested for driving under the influence. He received a letter of reprimand from his company commander for this incident. The remaining two periods of lost time were periods of absence without leave (AWOL).

f. The applicant was barred from reenlisting on 10 January 1983. The Bar to Reenlistment Certificate (DA Form 4126-R) shows the applicant had been counseled for writing/cashing bad checks and was punished for “Wrongful Purchase of Items in Excess of Authorized Limitations, ROK, Excess of Dollar Limitation” in violation of Article 92 of the UCMJ.

g. The applicant declined a separation medical examination on 26 May 1983.

h. A series Personnel Actions (DA Form 4187) show the applicant was transferred from Ireland Army Hospital (Ft. Knox, KY) to Walter Reed Army Medical Center effective 28 May 1983 and transferred back to Ireland Army Hospital effective 10 Jun 1983. The medical condition(s) associated with this period of hospitalization were not listed.

i. His period of service predates the EMR and JLV shows he has one (1) VA service-connected disability rating for tinnitus. The diagnosis of "Cerebral aneurysm, non-ruptured" was added to his medical problem list on 4 December 2024. There was no associated clinical encounter found in JLV.

j. The applicant's misconduct predates his hospitalization for an unknown medical condition.

k. There is no evidence the applicant had a medical condition which would mitigate his in-service misconduct or would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

I. It is the opinion of the ARBA medical advisor that a discharge upgrade based on a medical condition is unwarranted.

#### BEHAVIORAL HEALTH 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 honorable. He contends he experienced an undiagnosed mental health condition 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 3 January 1975.
- On 11 December 1982, the applicant was apprehended and taken to the county jail for driving under the influence (DUI), and he received a letter of reprimand.
- On 10 February 1983, he accepted NJP for being AWOL from 14 to 15 January 1983.
- On 27 May 1983, the applicant submitted an admission of AWOL for administrative purpose. He was AWOL from 11 February 1983 to 20 May 1983.
- The applicant's available service record is void of chapter 10 separation documents.
- The applicant was discharged on 13 July 1983 with the narrative reason for separation listed as "for the good of the service; in lieu of court-martial," and he completed 4 years and 8 months of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he experienced a brain bleed, requiring hospitalization, and serious family issues, resulting in divorce and mental anguish. He asserts traumatic brain injury (TBI) and mental health as mitigating factors in his misconduct. A Personnel Action form dated 2 June 1983 showed that the applicant was "admitted sick to US Ireland Army Hosp, this sta (*sic*) on 27 May 83," and it was indicated to be in line of duty. A second form of the same date documented his transfer to Walter Reed Army Medical Center. A third form showed he was transferred back to US Ireland Army Hospital on 10 June 1983. There was insufficient evidence that the applicant was diagnosed with TBI or a 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 the applicant initiated healthcare at the VA in March 2024. He reported a history of brain hemorrhage in May 1983, which required a 22 day hospitalization, and he had an angiogram but no aneurysm was found. He also reported taking an antidepressant medication and a medication for sleep, and these medications were prescribed by his primary care provider. He is 10% service connected for Tinnitus.

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 mental health condition or TBI. Additionally, because the application is void of the specific circumstances surrounding his chapter 10 separation, it is difficult to offer a full opine related to mitigation.

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 and a TBI at the time of the misconduct. The application did not include any medical or mental health records, but VA documentation from 2024 showed prescriptions for an antidepressant and a sleep medication by his primary care provider. There is also notation of a history of brain hemorrhage, and personnel records showed the applicant had been hospitalized in 1983.

(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. VA documentation from 2024 showed that the applicant was receiving medications to treat depression and insomnia,

and there is notation that he reported a history of a brain hemorrhage. However, in the absence of separation documents, no opine regarding mitigation can be offered.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board reviewed and concurred with the medical advisor's review finding no evidence to support the applicant had a condition or experience that would mitigate his misconduct. However, the Board majority was convinced by the applicant's supporting character letters and non-violent misconduct to support an upgrade to under honorable conditions (General). The Board minority found no error or injustice in the separation proceedings and designated characterization of service assigned by during separation. Based on a preponderance of the evidence, the Board majority granted relief to upgrade the applicant's discharge to under honorable conditions (General).
2. 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:

Mbr 1      Mbr 2      Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	<input type="checkbox"/>	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 13 July 1983 to show a characterization of service as under honorable conditions (General).

4/11/2025

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, 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, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
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.
  - 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 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.

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. 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.

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. 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.

//NOTHING FOLLOWS//