

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240005801

APPLICANT REQUESTS: upgrade of his (general) under honorable conditions discharge.

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, 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 he has been successfully rehabilitated through Veterans Affairs. He finished intense treatment of post-traumatic stress disorder.
3. The applicant enlisted in the Regular Army on 31 May 1973. He held military occupational specialty 52A (Powerman).
4. He received non-judicial punishment under Article 15 of the Uniform Code of Military Justice on 18 March 1974, for possession of a controlled substance (marijuana).
5. His immediate commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, for unsuitability.
6. On 3 May 1974, the applicant having been advised by counsel of the basis for the contemplated action to separate him for unsuitability under the provisions of chapter 13, AR 635-200. He understood that he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to him.

7. On 13 May 1974, his commander recommended that he be separated prior to the expiration of his current term of service under the provisions of Chapter 13, AR 635-200 for reasons of unsuitability. The mental and psychiatric consultation mentioned by his commander are void of his records.

8. On 17 May 1974, the separation authority approved separation under the provisions of AR 635-200 for unsuitability. He directed a General Discharge Certificate be issued.

9. Accordingly, he was discharged under honorable conditions on 22 May 1974, under the provisions of AR 635-200, paragraph 13-5b. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 months and 8 days net active service this period. He had 15 days lost under Title 10 USC 972.

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

11. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 13 of the regulation in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service.

12. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (General) to honorable. He contends he experienced 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 31 May 1973.
- The applicant received NJP on 18 March 1974, for possession of a controlled substance (marijuana), and separation was recommended by his commander under the provisions of Chapter 13, AR 635-200 for reasons of unsuitability.
- The applicant was discharged on 22 May 1974, and he was credited with 11 months and 8 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The

applicant asserts he has been successfully rehabilitated through the VA and he notated "PTSD" on his application. A memorandum with the subject, "Discharge for Unsuitability and Chapter 13, AR635-200" showed that the applicant's discharge was recommended for the reasons stated in an attached mental and psychiatric consultation by a provider at Reynolds Army Hospital. However, that attachment is not included in the application. The applicant did not submit any medical or behavioral health documentation with his application. There was an absence of evidence that the applicant was diagnosed with any behavioral health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes DoD and VA medical and mental health records, was also reviewed and showed considerable history of mental health related treatment or diagnoses dating back to 1995 when documentation indicated he was involved in a substance abuse program.

e. His initial BH diagnoses included Other personality disorders (1996), "neurotic depression" and Major depressive disorder, recurrent, severe without psychotic features (1997). On 15 Jan 1997, the psychologist noted applicant reported a history of childhood trauma, including sexual abuse, and documentation from December 2003 indicated he was arrested for failing to register as a sex offender. The provider diagnosed him with "Bipolar affective disorder II, R/O PTSD from childhood trauma, Polysubstance dependence in early remission and Hx dysthymia." During a psychotherapy session, he referred to several therapeutic interventions he participated in. The structure of day programs and varied groups seemed helpful in the regulation of emotions and behavior. It was noted that his childhood history included considerable neglect, abuse and sexualized behavior towards him. A Psychiatry note (Dec 1, 2009) indicated a recent relapse with cocaine and alcohol following a self-reported 13-year period of sobriety from alcohol. It was noted his medications included Fluoxetine for depression and anxiety and olanzapine for mood stability and intrusive thoughts. Treatment planning included AA and growth groups in a day treatment program. Documentation from 23 Feb 2010 indicated applicant's report of significant anxiety, panic symptoms related to his PTSD and bouts of excess drinking that ran so counter to his work at AA and sobriety maintenance.

f. Applicant continued to have frequent behavioral health sessions, individually and group, from 2011-2024. He participated in numerous cognitive-behavioral groups for PTSD and mood issues in particular. On 18 Oct 2021, the BH provider identified a history of post-traumatic stress disorder, severe bipolar disorder with psychotic features, and cannabis abuse. It was noted he seemed to feel better with positive results from his medications with greater insight recognizing anxiety triggers and improvement handling social situations. On 11 Oct 2024, applicant informed a social worker he was engaging positively with family members with reduced stress and was agreeable to monthly case management sessions.

g. A Compensation and Pension evaluation was conducted by VA on 3 Mar 2023 which established a diagnosis of PTSD with depressive features. It further identified a childhood history entailing several instances of sexual and physical abuse that continued to produce an array of symptoms supportive of a PTSD diagnosis. The evaluation noted that it was less likely than not that his PTSD was further aggravated during his time of active duty. On 29 Mar 2023, applicant self-reported a prior diagnosis of PTSD and that his methamphetamine use had stopped (3 Feb 2022), his psychosis had abated and his sleep had improved. There was not a service-connected disability that resulted from this evaluation.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor there is insufficient evidence to support applicant's contention he had a condition or experience, as with PTSD, that mitigates his misconduct. He was not awarded a service-connected disability, and the later diagnosis of PTSD by VA providers following his discharge is predominantly associated with sexual abuse during his childhood years. There is simply an absence of clinical evidence during his time in service to demonstrate the presence or worsening of PTSD from childhood trauma.

i. 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, PTSD, at the time of the misconduct. Documentation from his time in service showed that a mental health evaluation was conducted, and the applicant was determined to be unsuitable for service. However, that documentation is unavailable. The applicant has been diagnosed with and treated notably for PTSD, Bipolar disorder and substance abuse by the VA since at least 2018, 2003 and 2015 respectively, but the primary trauma is related to childhood history of abuse.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant had experienced a worsening of a mental health condition from childhood, PTSD, while on active service. He provided no records of a mental health diagnosis, and no records were found through JLV directly connected to his time in service. Substance use could be an attempt to avoid negative emotions, but the presence of misconduct is not sufficient evidence of a mental health condition. However, the applicant contends he was experiencing a mental health condition (PTSD) or an experience that mitigated 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, the evidence found within the military record, and Department of Defense Guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant’s contentions, his record of service, the frequency and nature of his misconduct to include NJP and lost time on his DD Form 214, the reason for his separation and the character of service he received upon discharge in 1974. The Board considered the review and conclusions of the Agency medical advisor. The Board considered his initial diagnoses in 1995 and the remarks regarding childhood trauma. The Board found: (1) the applicant asserts he has an undiagnosed mental health condition (PTSD) at the time of his misconduct; (2) the applicant asserts he was experiencing PTSD while on active service; (3) insufficient evidence, beyond self-report, that the applicant had experienced a worsening of a mental health condition from childhood, PTSD, while on active service. He provided no records of a mental health diagnosis, and no records were found through JLV directly connected to his time in service. The Board considered the applicant’s statement regarding PTSD, but found it was not sufficient to overcome the misconduct as a matter of liberal consideration. The applicant did not provide evidence of post-service achievements or references in support of a clemency determination by the Board. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]
[REDACTED]

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 (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 13 of the regulation in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. In pertinent part, it provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. 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//