

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240006220

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Supporting Documents organized and labeled as:
 - Enclosure A – Veterans Service Officer Letter, 25 March 2024
 - Enclosure B – Self-authored statement, 21 March 2024
 - Enclosure C – Service Medical Documents, 1990-1991 (27 pages)
 - Enclosure D – Service School Academic Evaluation Reports
 - Enclosure E – Military Awards
 - Enclosure F – DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 17 April 1992

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 along with a self-authored statement with his application, he would like his UOTHC discharge upgraded to an HD due to incurring a TBI while on active duty (see attached statement for additional details).

a. While assigned to Fort Ord, CA and working on a special project near the US-Mexico border, he and some of his fellow Soldiers went to Juarez (Mexico) and ended up at a club. He was asked to watch his acquiesces' drinks and seats while they went to the restroom. A group came into the bar and claimed the bar as theirs. As he spoke Spanish, he was trying to defuse the situation. While speaking to the group leader to resolve the situation, a person on his left side came in swinging. He blocked his punch

and pulled him down and started hitting him. Someone threw a beer bottle that hit him on the right side of his head, and he blacked out. Once he came to, he was still getting punched in the face. After that his memory is a blur and he doesn't remember much but waking up on an operating table getting his head and ear sewn up.

b. After being sent home he stated to forget stuff and his vision was hindered. He forgot where he lived, his children's names, dates, and events. He had his vision checked and was advised that due to his injury, his right pupil's shape had changed. His personality changed, and he got angry very easily, started drinking heavily, doing drugs, and hung out with dangerous people. He started hearing voices in his head. He drank and did drugs every night. He was sent to the Presidio of San Francisco to get evaluated. He was told that he would have issues with the right side of his face, that his right pupil was abnormal and that he may have other issues later on in his life.

c. He was on a path of self-destruction, and nobody would help him. He had many run-ins with law enforcement for drug and alcohol offenses. One time, he had a black out episode and was told by the police officers that they had chased him all over town. He didn't know what was going on when he was arrested. He only came into consciousness when he burned his face on the police car's hood. He was sent to rehab, but it didn't work.

d. He had a heart attack at the age of 50. He was advised at the time they had found a blood clot on the right side of his head. He was also diagnosed with vertigo and sometimes has to use a can to keep his balance. He eventually went to a psychiatrist and a psychologist a few times at a nearby Navy base. They wanted to put him on medication, but he refused as he did not trust them.

3. In a Veteran Service Officer letter, dated 25 March 2024, the author supports the applicant's request for a discharge upgrade and opined the following:

It is my belief that (Applicant's) behavior in 1991, which ultimately led to his unsatisfactory discharge in 1992, was likely the result of a traumatic brain injury that occurred while he was on active duty in 1990. (Applicant) was hit on the head with a bottle while defending himself from an attack in a bar fight that he did not start. As a result of his head injury, (Applicant) blacked out for a time and his behavior was affected thereafter.

Prior to this incident, (Applicant) received excellent performance reviews while in the service and even received awards for exceptional meritorious service and exemplary performance. These awards include an Army Achievement Medal and a Certificate of Achievement.

4. On his DD Form 149, the applicant indicates TBI is related to his request.

5. He enlisted in the Regular Army on 7 November 1986. He reenlisted on 7 September 1989, and again on 21 November 1991.

6. He provides a DA Form 2173 (Statement of Medical Examination and Duty Status), dated 22 January 1991, showing he was injured on 8 December 1990 in Juarez, Mexico with a laceration to the right ear and right forehead/scalp. The form shows in:

a. item 15 (Details of Accident or History of Disease), the entry "Service Member was hit with a bottle (random assault) in a bar in Juarez, 8 December 1990";

b. item 19 (Duty Station), an "X" was placed in the "Present for Duty;"

c. item 22 (Individual Was on), an "X" was placed in the "Active Duty" box;

d. item 30 (Details of Accident – Remarks), states: "The Soldier did not start this incident and was injured as a bystander.";

e. item 31 (Formal LD Investigation Required), "No" was circled; and

f. the form was signed by the unit commander on 22 January 1991.

7. He provides 27 pages of military medical documents that details his clinical visits, medical diagnosis, and treatments regarding his incident (see attachments for further details).

8. He was reprimanded in writing by Lieutenant Colonel [REDACTED] Commander, 2d Squadron (Reconnaissance), 9th Cavalry Aviation Brigade, 7th Infantry Division (Light), Fort Ord, CA, 26 April 1991, wherein he stated:

On or about 20 March 1991, you submitted a urine sample to military authorities that when tested showed positive for traces of cocaine. Upon being confronted with this information, you provided to this command evidence that you had taken Tylenol with codeine, and this had triggered the positive result. This medication had been prescribed to your mother-in-law.

I hereby reprimand you. It is against federal law to consume the medication prescribed to another person, and is ill-advised, because the medication was prescribed specifically for that person, and may have caused you physical harm. Conduct such as this raises doubts as to your judgement. An incident such as this cannot occur again.

I impose this letter of reprimand as an administrative measure and not as punishment under Article 15, Uniform Code of Military Justice. I intend to file this letter in your Official Military Personnel File (OMPF).

Any rebuttal to be addressed to me shall include one of the statements contained in paragraph 3-6, Army Regulation 600-37 [Unfavorable Information], and may contain any written information you want me to consider.

9. He acknowledged receipt of the reprimand on 13 May 1991 and elected not to submit rebuttal matters.

10. After carefully considering the circumstances of the misconduct and the recommendations of his command, the Assistant Division Commander (Maneuver) 7th Infantry Division (Light) directed filing the letter of reprimand in the applicant's OMPF on 28 October 1991.

11. His limited available record is void of a separation packet containing the specific facts and circumstances surrounding the processing of his discharge. However, his record contains orders reducing him in rank, a DD Form 214, signed by him, which identifies the authority and reason for his discharge.

12. He was discharged on 17 April 1992. His DD Form 214 shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 5 years, 5 months, and 11 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10
- item 26 (Separation Code) – KFS (for the good of the service in lieu of trial by court-martial)
- item 27 (Reenlistment Code) – RE 3 (ineligible for reenlistment without a waiver)
- item 28 (Narrative Reason for Separation) – For the Good of the Service - in Lieu of Court-Martial

13. He provides in Enclosures D and E several of his academic evaluation reports and awards attesting to his favorable conduct and performance prior to his incident.

14. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated that Traumatic Brain Injury (TBI) is related to his request. 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 (RA) on 07 November 1986 and re-enlisted twice (07 September 1989 and 21 November 1991), 2) a DA Form 2173 dated 22 January 1991 shows that he was injured on 08 December 1990 with a laceration to the right ear and right forehead/scalp who was injured as a bystander. A formal line of duty investigation was not required, 3) the applicant was reprimanded on 26 April 1991 due to a urine sample showing positive traces for cocaine. He provided evidence that he had taken Tylenol with Codeine which had been prescribed to his mother-in-law. The letter indicated that it was an administrative measure and not as a punishment under Article 15. The Assistant Division Commander directed that the letter of reprimand be filed in the applicant's OMPF on 28 October 1991, 4) the applicant's record is void of the separation packet surrounding the processing of his discharge. 5) Orders 56-341 dated 25 March 1992 reduced him in rank from sergeant/E-5 to private/E-1 effective 19 March 1992. He was discharged on 17 April 1992 under the provisions of AR 635-200, Chapter 10, For the Good of the Service-in Lieu of Court-Martial, with a separation code of KFS and re-entry code of RE 3.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant included copies of his in-service medical records as part of his application. An SF 600 shows the applicant was evaluated on 11 December 1990 due to being hit in the head with a bottle and reported experiencing blurry vision and dizziness. The provider documented that the applicant did not experience a loss of consciousness (LOC) or fracture as a result of the incident. A CT scan was ordered and documented there was no mass effect and no bleeds. He was put on quarters due to head injury and prescribed Tylenol as needed for headache. On 12 December 1990, it was documented that he was feeling better with decreased headaches and no visual changes though noted a probable [illegible word] fracture and would discuss with neurology. A medical record shows the applicant was admitted to the hospital on 14 December 1990 and discharged on 15 December 1990 as he had been referred for further evaluation for his head injury. The diagnoses were noted as Traumatic Cranial Nerves V, VI, and VII (post concussive syndrome). The provider documented the applicant was experiencing occasional mild headaches, mild occasional nausea with

vomiting, and vague mental slowing subjectively without LOC, memory loss, hearing loss, or vertigo. His CT scan was confirmed to be within normal limits (WNL) and was discharged to follow-up with neurology in one month. He was prescribed Motrin and Tylenol. An inpatient Treatment Record Cover Sheet regarding this hospitalization shows the diagnoses as Intracranial Injury of Other and Unspecified Nature, Other Specified trigeminal Nerve Disorders, Sixth or Abducens Nerve Palsy, Bell's Palsy, and Late Effect of Injury to Cranial Nerve. A follow-up dated 28 December 1990 shows he reported improvement in his headaches but that he was forgetting things at home and felt angry sometimes though overall felt 'better.' The evaluating provider noted that the applicant had some possible mild organic brain dysfunction status post trauma with some personality changes or possible Post Concussive Syndrome, with a note to consider mental health counseling. A medical note dated 03 January 1991 shows that he reported experiencing headaches that were managed with Tylenol and rest. A Medical Record consultation sheet from neurology dated 29 January 1991 shows the applicant was reporting spells of confusion since the incident. On 05 February 1991, the applicant reported that his headaches were improved in terms of frequency (reduced to 4-5 times per day), though unchanged intensity. The diagnosis was documented as Post-Concussive Syndrome, improving. An in-service Statement of Medical Examination and Duty Status dated 22 April 1991 shows the applicant had a laceration to the right ear and right forehead/scalp after being hit with a bottle in a bar in December 1990. A Report of Medical History for the purposes of ETS dated 20 March 1992 shows he marked 'yes' to several items, including the following: frequent or severe headaches, head injury, loss of memory or amnesia. It was noted in the comments section that he had experienced headaches since he was hit on the head and experienced amnesia after his head injury. An undated HSC Form 79-R (Master Problem List) shows 'Substance Abuse Cocaine' was entered in March 1992 under 'Major Problems.' Under temporary problems there were several medical conditions listed, to include right side Head Injury (11 December 1990).

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. A VA Rating Decision letter dated 14 April 1993 available via the Veterans Benefits Management System (VBMS) shows that the applicant claimed service connection for residuals of the head injury that occurred in December 1990 and reported having headaches off-and-on since the injury in addition to amnesia. The letter stated that VA service-connection was unable to be established as the injury was shown to have been "incurred during a service period ended by a discharge that was issued under conditions which constitute a bar to the payment of compensation." Review of the applicant's VA treatment records show that he had been treated for Major Depressive Disorder (MDD) by non-VA/civilian providers and had been prescribed Depakote (mood stabilizer) and Duloxetine (antidepressant). He received some BH services through the VA in 2019 from July through September following an incident with his partner. A psychiatry note dated 03 July 2019 shows he reported a history of depression and anxiety with irritability. Although he reported that he had "always" struggled with anger

and irritability, it had not escalated to the point it did recently for over 20 years. It was documented that he reported receiving an other than honorable discharge from the military due to use of cocaine.

e. A letter provided by a Veteran Service Officer dated 25 March 2024 shows that the author stated he believed that the applicant's behavior in 1991, which ultimately led to his discharge in 1992, was likely due to TBI that occurred while on active duty in 1990. It was further noted that as a result of his head injury, the applicant blacked out for a time and his behavior was affected thereafter.

f. The applicant provided a self-authored statement dated 21 March 2024 as part of his application. He reported that after the incident wherein he got hit in the head, he started forgetting information and was "cloudy and confused a lot." He further indicated that he would be quick to anger and that he experienced personality changes such as becoming a "loner," drinking heavily, doing drugs, and spending time with dangerous people. The applicant indicated he started hearing voices that "are always in my head" and that he did not care about anything. He indicated that he had many run-ins with law enforcement due to issues with alcohol and drugs.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had two potentially mitigating condition(s) in-service, Head Injury (TBI) and Post-Concussive Syndrome. However, as the specific facts and circumstances that led to the applicant's discharge are unavailable for review, BH mitigation is unclear.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Head Injury and Post-concussive Syndrome in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with head injury and Post-concussive Syndrome in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of the applicant's in-service medical records show a history of treatment for Head Injury and Post-concussive Syndrome. The specific facts and circumstances that led to the applicant's discharge were unavailable for review; however, there is some in-service documentation indicative of misconduct associated with substance use. Substance use is often a self-medicating behavior, used to avoid, mask, and cope with symptoms, and this can be associated with the natural history and sequelae of numerous disorders, to include Head Injury and Post-Concussive Syndrome. As there is an association between changes in behavior and decision

making, substance use, and head trauma, there is a nexus between the applicant's in-service substance use and his diagnoses of Head Injury and Post-Concussive Syndrome. As such, BH mitigation is supported for these episodes of misconduct. However, as the specific facts and circumstances that led to his discharge are unavailable for review, a nexus cannot be established between the reason for discharge and his in-service diagnoses. Thus, BH mitigation is unclear.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 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 noted the applicant's contention and determined his statement and the evidence of record was sufficient to warrant a change to the applicant's characterization of service to under honorable conditions (General). Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined partial relief was warranted:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Head Injury and Post-concussive Syndrome in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with head injury and Post-concussive Syndrome in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. Review of the applicant's in-service medical records show a history of treatment for Head Injury and Post-concussive Syndrome. The specific facts and circumstances that led to the applicant's discharge were unavailable for review; however, there is some in-service documentation indicative of misconduct associated with substance use. Substance use is often a self-medicating behavior, used to avoid, mask, and cope with symptoms, and this can be associated with the natural history and sequelae of numerous disorders, to include Head Injury and Post-Concussive Syndrome. As there is an association between changes in behavior and decision

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 17 April 1992, to show an under honorable conditions (General) characterization of service.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains upgrading his characterization of service to honorable.

6/6/2025

X █

CHAIRPERSON

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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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation states that the appropriate narrative reason to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with SPD Code KFS is "in lieu of trial by court-martial."
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7(a) stated 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 3-7(b) stated 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 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a

punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would insure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would 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.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

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 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 post-traumatic stress disorder; 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.

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.

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.

//NOTHING FOLLOWS//