

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006454

APPLICANT AND HIS REPRESENTATIVE REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130009777 on 20 February 2014.

2. The applicant states that he is seeking to correct an injustice that occurred during the last four months of his military service, which continues to cause him mental pain and embarrassment even after more than 40 years. He asserts that recent regulatory changes by the VA present an opportunity to rectify his discharge status, which he believes was wrongfully based on a psychiatric opinion inconsistent with AR 635-200, Chapter 10. According to the applicant, AR 635-200 requires that soldiers who fail a drug and alcohol program and are found by a psychiatric or medical doctor to be in violation must undergo a medical examination before separation. However, he contends that he was never enrolled in such a program, nor did he receive treatment for any mental health conditions at the time. He further argues that the psychiatrist and authorities responsible for his discharge failed to comply with statutory requirements under sections 1177 and 1214 of Title 10, U.S. Code, which mandate a medical examination prior to administrative separation for any soldier who has been deployed overseas.

The applicant feels that he served 12 months in Germany but was never given the required medical examination. He asserts that had such an examination been conducted, it would have revealed his suffering from mental disorders, which remain

untreated. He further claims that his mental health conditions at the time have since developed into PTSD, clinical depression, mood disorder, and chronic depression symptoms. The applicant respectfully requests that the VA conduct an evaluation to determine his eligibility for treatment for all mental disorders. Additionally, he seeks reconsideration of the characterization of his discharge, arguing that the decision was improper and failed to account for his medical issues. He states that he served approximately 46 months honorably, though he is uncertain of the exact duration. He contends that administrative records indicate an error in his discharge decision and that it is "as likely as not" that his separation was inconsistent with the medical conditions he experienced.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 4 August 1975.

b. On 9 June 1977, he accepted nonjudicial punishment for disrespect to a superior noncommissioned officer. His punishment included reduction to private first class (PFC)/E-3 and forfeiture of seven days.

c. On 19 October 1978, a DA Form 4465 (ADAPCP (Alcohol and Drug Prevention and Control Program) Military Client Intake and Follow-Up Record) shows, a physician diagnoses the applicant with:

- Alcoholism – Episodic Excessive Drinking
- Improper use of psychostimulants
- Improper use of cannabis sativa
- Improper use of other specified drugs

d. On 24 October 1978, he accepted nonjudicial punishment for on or about 12 October 1978 willfully disobey a superior noncommission officer. His punishment included reduction to private first class (PFC)/E-3 (suspended for 30 days.

e. On 18 December 1978, a DA Form 4465 shows, the applicant had a 60-day follow-up report. The chain of command reported the applicant had good progress and military effectiveness.

f. On 1 February 1979, he accepted nonjudicial punishment for specification 1 on or about 23 January 1979 went absent without leave (AWOL) and returned on or about 25 January 1979. Specification 2 failure to obey an order from a superior noncommission officer. Specification 3 on or about 30 January 1979 willfully disobey a lawful order.

g. Two DD Forms 458 (Charge Sheet) dated 22 February 1979 and 3 April 1979, show court-martial charges were preferred on the applicant for:

- disrespect to a superior commissioned officer by saying “Fuck you sir”.
- for striking a superior noncommission officer on his leg and striking him with his fist.
- on or about 21 March 1979 the applicant went AWOL and returned on or about 31 March 1979.

h. On 9 April 1979, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant’s rank was listed as specialist private second class (PV2)/E-2. He acknowledged:

- he was making the request of his own free will.
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense.
- he does not desire further rehabilitation or further military service.
- if his request for discharge was accepted, he may be discharged under other conditions other than honorable.
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law.
- he must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading.
- he may expect to encounter substantial prejudice in civilian life.

i. On 16 April 1979, the chain of command recommends the approval of the applicant’s request for discharge for the good of the service. He would be issued an under other than honorable conditions discharge.

j. On 17 April 1979, the separation authority approved the applicant’s request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the grade of private (E-1).

k. On 20 April 1979, the applicant underwent a medical evaluation for the purpose of separation which indicated she was generally in good health. He was subsequently marked qualified for service, to include separation/chapter.

- Standard Form 88(Report of Medical Assessment)
- Standard Form 93 (Report of Medical History)

l. Orders 114-205, dated 30 April 1979, discharge the applicant from active duty with an effective date of 2 May 1979.

m. On 10 May 1979, Special Court-Martial Order (SPCM) Number 9 amended SPCM Number 1 on 5 April 1979. The applicant's request for discharge for the good of the service pursuant to provisions of chapter 10, AR 635-200 was approved. The applicant will be discharged 1 May 1979 and issued an other than honorable discharge.

n. On 2 May 1979, he was discharged from active duty with a under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 3 years, 8 months, and 17 days of active service with 12 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Chapter 10," with reentry code 3, 3B. It also shows he was awarded or authorized:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Grenade Launcher
- Good Conduct Medal

4. On 20 February 2014, the ABCMR rendered a decision in Docket Number AR20130009777. The Board found 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.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), 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.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting a characterization upgrade. The applicant asserts recent regulatory changes would have required a psychiatric exam before separation which would have identified mental health difficulties. Additionally, he reported he did not receive substance care which he should have been entitled to. The applicant contends since he could not access VA services, he developed depression, mood disorder, and PTSD. Of note, the applicant does not indicate what the trauma event was.

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 04 August 1975.
- Two Charge Sheets, dated 22 February 1979 and 03 April 1979, outline the charges preferred.
- On 09 April 1979, the applicant consulted with legal and requested a Chapter 10.
- On 17 April 1979, the separation authority approved the request.
- On 02 May 1979, the applicant was discharged from service under AR 635-200 Chapter 10 with an Under Other than Honorable characterization and re-entry code of 3.

c. The active-duty medical records were reviewed.

(1) Due to the period of service, there are no active-duty electronic medical records.

(2) The separation file contains a 19 October 1978 Alcohol and Drug Prevention and Control Program (ADAPCP) DA Form 4465 with diagnoses of Alcoholism, episodic excessive drinking, and improper use of psychostimulants, cannabis, and other drugs. The applicant reported recent use of amphetamines, cocaine, cannabis, hallucinogens, and PCP. He reported a remote history, over six months ago, of barbiturates and hashish. The DA Form 4465 indicates he would be enrolled into non-residential rehabilitative care, outpatient treatment. A 60-day ADAPCP follow up, dated 18 December 1978, indicates he was active in group and individual therapy. A 20 April 1979 separation physical indicates the applicant denied any behavioral health symptoms, conditions, or treatment.

d. The VA's Joint Legacy Viewer (JLV) medical records were reviewed.

(1) The applicant is not service connected.

(2) A January 2025 entry indicates the applicant was requesting VA behavioral health care. He was provided information on how to pursue enrollment.

(3) Two week later, he contacted the VA requesting therapy. He noted two deaths of fellow Soldiers while serving with "regrets about the experience." The employee indicated the applicant was still not eligible for services.

e. The applicant did not submit medical records for review remarking any in-service records were unavailable to him; he hoped ARBA had access to assist in his application.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that mitigation cannot be determined due to a lack of information with associated documentation. While the applicant's assertion of post-service Depression and PTSD, contending symptoms were present in-service, is acknowledged, there is no documentation supporting these statements as the separation physical reflects denial of symptoms, the VA is void of a diagnosis, and the applicant did not submit any civilian records. Moreover, the contention the applicant did not receive substance related care is incongruent with available records that indicate he was active in group and individual substance treatment. Lastly, while AR 635-200 has been updated, at the time of the applicant's separation, Chapter 10 discharges did not require a Mental Status Exam (MSE).

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, per applicant assertion alone, he had behavioral health symptoms in-service which have subsequently developed into Depression and PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per applicant assertion alone, he had behavioral health symptoms in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, the applicant did not provide documentation in support of the assertions and available records are void of behavioral health symptoms or conditions. Accordingly, there are no known conditions or experiences to apply for mitigation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that mitigation cannot be determined due to a lack of information with associated documentation. While the applicant's assertion of post-service Depression and PTSD, contending symptoms were present in-service, is acknowledged, there is no documentation supporting these statements as the separation physical reflects denial of symptoms, the VA is void of a diagnosis, and the applicant did not submit any civilian records

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, per applicant assertion alone, he had behavioral health symptoms in-service which have subsequently developed into Depression and PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per applicant assertion alone, he had behavioral health symptoms in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, the applicant did not provide documentation in support of the assertions and available records are void of behavioral health symptoms or conditions. Accordingly, there are no known conditions or experiences to apply for mitigation.

3. The Board found insufficient evidence of mitigating factors to grant relief. The applicant was discharged under other than honorable conditions following a pattern of serious misconduct, including multiple instances of disrespect toward commissioned and noncommissioned officers, willful disobedience of lawful orders, assault, and repeated periods of unauthorized absence. The Board determined these actions culminated in court-martial charges and a voluntary request for discharge under Chapter 10, Army Regulation 635-200. While a brief period of progress was noted during his participation in the Alcohol and Drug Prevention and Control Program, it was not sustained, and the misconduct continued. Furthermore, the applicant provided no post-service achievements, character references, or evidence of rehabilitation to mitigate the severity of his offenses or demonstrate a change in character. Given the gravity and frequency of his infractions, the Board agreed that the original characterization of service remains appropriate and equitable. As such, the Board found reversal of the previous Board determination is without merit and relief is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20130009777 on 20 February 2014.

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. 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 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 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.

4. 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, 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.

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.

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.

//NOTHING FOLLOWS//