

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240006668

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge and 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)
- Verification of Military Education and Training (VMET)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Degrees and Certificates (3 pages)
- Character Letter
- ABCMR Decision – AR20140014839

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 AR20140014839 on 14 May 2015.

2. The applicant states he is seeking an upgrade of his under other than honorable conditions discharge to general, under honorable conditions. Prior to the events that led to his discharge, he served an honorable period of five years in the U.S. Army Reserves, for which he believes he did not receive a DD Form 214. He suffered from undiagnosed major depression triggered by his ex-wife's affair, at the time of the events which led to his discharge. His condition led to poor decisions for which he has since sought therapy and spiritual counsel. An upgrade would mean the world to him as he deeply loves his country and does not want to die with an under other than honorable conditions discharge.

3. The applicant provides:

- Bachelor of Science in Business Management, 31 July 2010
- Master of Arts in Organizational Leadership, 9 December 2017

- Project Management Professional Certificate, 24 March 2018
- Character Letter from Mr. TC, CEO, The Bunker, 24 June 2019 – describes applicant as unique, strong, ambitious, and a great person

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

a. Having had prior service in the USAR, the applicant entered active duty on 22 August 1991.

b. He was released from active duty training on 5 December 1991 with an uncharacterized characterization of service. His DD Form 214 shows he completed 3 months and 14 days of active service with no lost time.

c. He enlisted in the Regular Army on 25 May 1995.

d. His DA Form 2-1 (Personnel Qualification Record) shows lists two period of absence without leave (AWOL):

- 19 March 1996 to 25 March 1996 – 7 days
- 2 May 1996 to 19 October 1996 – 171 days

c. A DA Form 4187 (Personnel Action) shows on 20 October 1996 the applicant's duty status changed from dropped from rolls to present for duty. Section IV (Remarks) further noted the applicant surrendered to military authorities at Fort Stewart, GA.

e. On 23 October 1996, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for being AWOL from 2 May 1996 to 20 October 1996.

f. On 23 October 1996, after consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty 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 than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- 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 may apply to the Army Discharge Review Board or the ABCMR for a review of discharge
- he may expect to encounter substantial prejudice in civilian life
- he elected to submit a statement on his behalf

g. He submitted a statement to the separation authority on his own behalf which stated:

- prior to going AWOL he had been diagnosed by the Fort Stewart Mental Health Clinic with severe depression
- his physician prescribed him Prozac
- he was threatened by a noncommissioned officer (NCO) in another unit whom he found out was having an affair with his wife
- the NCO was being investigated at the time the applicant went AWOL
- his grandfather was very ill and needed his assistance
- he is ashamed of failing his country and asks all factors be considered
- letter from Dr. TVL noting Mr. HP suffers from congestive heart failure and chronic obstructive lung disease

h. On 10 December 1996, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted pay grade.

i. On 19 February 1997, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 27 days of active service with 178 days of lost time.

5. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214 for the service period ending 5 December 1991. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. 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.

7. On 14 May 2025, the ABCMR rendered a decision in Docket Number AR20140014839. The Board found the applicant's contention that he was experiencing personal problems at home that he felt required his immediate attention is duly noted. However, his record is void of any indication that he sought the assistance of his chain of command, unit chaplain, or any of several agencies that were available to help him cope with these matters. The evidence shows he was properly and equitably discharged in accordance with the regulations in effect at the time. There is no evidence

of procedural errors which would have jeopardized his rights. All requirements of law and regulation were met and his rights were fully protected throughout the separation process. Further, his discharge accurately reflects his overall record of service.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

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

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge. He selected OMH on his application as related to his request.

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:

- Applicant entered active duty on 22 August 1991 with prior USAR service.
- Applicant was released from active-duty training on 5 December 1991 with an uncharacterized characterization of service.
- He enlisted in the Regular Army on 25 May 1995.
- DA Form 2-1 (Personnel Qualification Record) shows two period of absence without leave (AWOL):
 - 19 March 1996 to 25 March 1996 – 7 days
 - 2 May 1996 to 19 October 1996 – 171 days
- On 23 October 1996, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for being AWOL from 2 May 1996 to 20 October 1996.
- On 19 February 1997, he was discharged from active duty with an under other than honorable conditions characterization of service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states prior to the events that led to his discharge, he served an honorable period of five years in the U.S. Army Reserves, for which he believes he did not receive a DD Form 214. He suffered from undiagnosed major depression triggered by his ex-wife's affair, at the time of the events which led to his discharge. His condition led to poor decisions for which he has since sought therapy and spiritual counsel. An upgrade would mean the world to him as he deeply loves his

country and does not want to die with an under other than honorable conditions discharge.

d. Due to the period of service no active-duty electronic medical records were available for review. Hardcopy documentation shows the applicant submitted a statement to the separation authority on his own behalf in which he stated prior to going AWOL he had been diagnosed by the Fort Stewart Mental Health Clinic with severe depression and was prescribed medication. However, neither at the time of separation, during his prior Boards, or at this time has he provided any medical documentation substantiating his assertion.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The record contains a problem list showing the applicant's medical treatment via civilian providers, there is no indication the applicant has been treated or diagnosed with any behavioral health condition.

f. Based on the information available, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. Despite an extensive medical problems list in JLV, via civilian providers, the applicant has not been treated for any mental health condition. In addition, while the applicant asserts the stressor of his ex-wife's alleged affair as the cause of his misconduct, this would not serve as a mitigating condition per Liberal Consideration guidelines.

h. Per Liberal Consideration guidelines, his selection of OMH on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the lengthy AWOL offense leading to the applicant’s separation, and the following findings outlined in the medical review;

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? No.

(3) Does the condition or experience excuse or mitigate the discharge? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.

2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

//SIGNED//
 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant’s service records show he successfully completed advanced individual training resulting in a military occupational specialty of 12B, Combat Engineer. As a result, reissue his DD Form 214 for the service period ending 5 December 1991 to show an honorable characterization of service.

REFERENCES:

1. 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.

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. 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. 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 and/or in lieu of trial by court-martial. 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.

6. 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.

//NOTHING FOLLOWS//