

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240006699

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) 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 was told after a certain amount of time, he could get an upgrade. He received an Article 15 for a drug problem and never offered any support. Had he received help, he could have possibly served. It has been 46 years since his discharge. The disease of addiction is a mental health issue that he didn't know at the time. He volunteered to join the Army when he was just 17 years old.
3. On his DD Form 149, the applicant notes that other mental health issues are related to his request.
4. The applicant enlisted in the Regular Army on 11 February 1977.
5. On 12 May 1978, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order, on or about 25 April 1978.
6. On 12 May 1978, the applicant accepted NJP under the provisions of Article 15 of the UCMJ a second time, for failing to obey a lawful order, on or about 14 March 1978; and wrongfully possessing 0.01 grams more or less, of marijuana, on or about 14 March 1978.

7. On 3 June 1978, the applicant accepted NJP under the provisions of Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty, on or about 12 May 1978 and 14 May 1987; and willfully disobeying a lawful order from his superior noncommissioned officer, on or about 21 May 1978. His punishment included reduction to E-1, forfeiture of \$92.00 for one month, and 14 days restriction and extra duty.

8. The applicant's commander notified the applicant on 6 June 1978, that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program. As the specific reason, the commander cited the applicant's failure to function as a productive member in the U.S. Army. He had been counseled numerous times and received NJPs for his behavior.

9. The applicant acknowledged receipt of the separation notification on 6 June 1978. He was advised of the rights available to him and the effect of waiving his rights. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.

10. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, paragraph 5-31, with an under honorable conditions (general) discharge.

11. On 12 June 1978, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

12. Consistent with the chain of command's recommendation, the separation authority approved the recommended action on 20 June 1978, and directed the issuance of a General Discharge Certificate.

13. The applicant was discharged on 12 July 1978. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-31. His service was characterized as under honorable conditions (general). He completed 1 year, 5 months, and 2 days of net active service this period.

14. On 14 January 2025, the ABCMR staff requested the applicant provide medical documents to support his mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

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

16. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. 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 enlisted into the Regular Army on 11 February 1977.
- Applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 12 May 1978 for failing to obey a lawful order, on or about 25 April 1978.
- Applicant accepted NJP under the provisions of Article 15 of the UCMJ a second time, on 12 May 1978, for failing to obey a lawful order, on or about 14 March 1978; and wrongfully possessing 0.01 grams of marijuana, on or about 14 March 1978.
- Applicant accepted NJP under the provisions of Article 15 of the UCMJ, on 3 June 1978, for failing to go at the time prescribed to his appointed place of duty, on or about 12 May 1978 and 14 May 1987; and willfully disobeying a lawful order from his superior noncommissioned officer, on or about 21 May 1978.
- Applicant was discharged on 12 July 1978. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-31. His service was characterized as under honorable conditions (general) with RE code 3. He completed 1 year, 5 months, and 2 days of net active service this period.

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 he was told after a certain amount of time, he could get an upgrade. He received an Article 15 for a drug problem and was never offered any support. Had he received help, he could have possibly served. It has been 46 years since his discharge. The disease of addiction is a mental health issue that he didn't know at the time. He volunteered to join the Army when he was just 17 years old.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation of a medical examination for the purpose of separation, dated 8 June 1978, indicating no mental health concerns and PULHES "111111". On 12 June 1978, the applicant underwent a

mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant initiated services with the VA, related to homelessness, in June 2013 when he reported having been homeless for over a year. He was rapidly connected to services and the record shows ongoing supportive services related to housing. The applicant was repeatedly screened, and he denied any mental health concerns. After a brief break in service, on 17 July 2013, the applicant reported he was recently released from jail, he had been arrested due to theft. A comprehensive mental health examination, dated 22 October 2013, indicated the applicant did not meet criteria for PTSD or any other mental health condition but was diagnosed with substance abuse disorder: Methamphetamine Dependence, Polysubstance Dependence, and Nicotine Dependence. The record further shows he received ongoing social work and case management support, with a minimum of weekly contacts, as well as medication to support his abstinence from substance use. The applicant's treatment plan, dated 14 May 2014, shows his goals of maintaining employment, abstinence from substance use, and permanent housing; no mental health concerns were noted. A treatment plan dated 27 May 2014, shows applicant's substance use was in remission and the focus of his care was Other Specified Housing or Economic Circumstances. A home assessment note dated 30 September 2014 indicates the applicant was housed and reported being "very satisfied" with the services he received. He continued receiving supported services until November 2015, with a note dated 4 November 2015 stating the applicant was working full time, paying his rent, continued to maintain sobriety, and was active in his recovery. The applicant continued to receive follow-up case management support until September 2016. Despite an extensive ongoing medical history, there is no evidence of any other behavioral health contact or treatment.

f. Based on the information available, it is the opinion of the 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 treatment history, via the VA, the applicant has not been treated for any mental health condition. The applicant has been treated for substance abuse and received supportive services related to homelessness. However, substance use disorder without a comorbid mental health condition does not offer mitigation 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 misconduct 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 actually 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//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.

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 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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 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.

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.

//NOTHING FOLLOWS//