

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240006753

APPLICANT REQUESTS: through counsel:

- an upgrade of his characterization of service from under conditions other than honorable to honorable
- his narrative reason for discharged be changed to "Secretarial Authority"
- an upgrade of his reenlistment code
- an upgrade of his separation program number

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

- DD Form 149 (Application for Correction of Military Record), 16 May 2024
- Brief for Petition with Exhibits, undated
- Exhibit A: Applicant's personal statement
- Exhibit B: Applicant's Service Record
- Exhibit C: Applicant's post service medical records
- Exhibit D: Character Statement
- Exhibit E1: Three Secretary of Defense Memorandums (Hagel, Kurta, Wilkie) issuing guidance to Military Review Boards concerning discharge upgrade requests
- Exhibit E2: Extract from book *Mental Health Stigma in the Military* (2014)
- Exhibit E3: Vietnam Conflict Casualty Summary Data
- Exhibit E4: Extract from article *Military Personnel Who Seek health and Mental Services Outside the Military, Military Medicine* (2018)
- Exhibit E5: Extract from Code of Federal Regulations 32
- Exhibit E6: Extract from Army Regulation 600-8-100 (Leave and Passes), Chapter 4, June 2001
- Exhibit E7: Under Secretary of Defense Memorandum (Expansion of the Parental Leave Program), 4 January 2023

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 defers to counsel. Counsel states the applicant is entitled to an upgrade based on the following: First, the applicant meets the upgrade criteria established law and the Hagel and Kurta memorandum, which govern discharges based on conduct secondary to mental health conditions. Second, the applicant's petition should be granted because his discharge was unjust when factors affecting his capability to serve are considered. Third, changes in regulation would have provided the applicant with additional leave options to care for his family. Finally, the length time since the applicant left service merits clemency under the Wilkie memorandum.

3. Counsel provided eleven exhibits supporting the applicant's application. All eleven exhibits are available for the Board to review in the supporting documents.

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

a. He enlisted in the Regular Army on 28 June 1968.

b. On 27 August 1969, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for, on or about 31 July 1969, absent himself from his unit and did remain so absent until on or about 26 August 1969. His punishment included forfeiture of \$36.00, reduction to the rank/grade of private second class/E-2, and 14 days restriction.

c. The DD Form 458 (Charge Sheet), 21 January 1972, shows the applicant was charged with one specification of violation of Article 86 (Absent Without Leave), Uniform Code of Military justice, in that he did on or about 15 February 1970, without authority, absent himself from his unit and did remain so absent until on or about 20 January 1972.

d. Headquarters, 1st Battalion, 34th Infantry, Summary Court-Martial Order Number 2, 2 February 1970, shows the applicant was convicted by a summary court-martial for, on or about 1 December 1969, without authority, absent himself from his unit, and did remain so absent until on or about 29 December 1969.

(1) His sentence, adjudged on 2 February 1970, included reduction to the rank/grade of private/E-1, forfeiture of \$76.00 per month for one month, and confinement at hard labor for one month.

(2) On 2 February 1970, the sentence was approved and ordered executed, but the confinement was suspended for one month, unless sooner vacated.

e. On an unspecified date, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. He understood that if the request was accepted, he could be discharged under other than honorable conditions and furnished an undesirable discharge certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

f. On 11 February 1972, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any medical issues and found the applicant qualified for separation.

g. On 6 March 1972, the applicant's immediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service with the issuance of an undesirable discharge.

h. On an unspecified date, the applicant's intermediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service with the issuance of an undesirable discharge.

i. On 19 April 1972, the separation authority approved the recommended discharge under the provisions of AR 635-200, chapter 10, and notified the applicant that he would be issued an undesirable discharge certificate.

j. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 19 April 1972 under the provisions of Army Regulation 635-200. He completed 1 year, 8 months, and 24 days of net active service with lost time from 31 July 1969 to 25 August 1969, from 1 December 1969 to 28 December 1969, from 15 February 1970 to 15 March 1970, and from 16 March 1970 to 19 January 1972. His service was characterized as under conditions under than honorable. He was issued the separation program number "246" and the reenlistment code "RE-4". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- National Defense Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

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

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions that mitigate his misconduct. 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 on 28 June 1968; 2) On 27 August 1969, the applicant accepted nonjudicial punishment (NJP) for going AWOL between 31 July 1969 and 26 August 1969; 3) Per a 02 February 1970 court-martial order, the applicant was convicted by a summary court-martial for going AWOL again between 01 December 1969 and 29 December 1969; 4) On 21 January 1972, the applicant was charged once again with going AWOL between 15 February 1970 and 20 January 1972; 5) On 19 April 1972, the applicant was discharged, Chapter 10, for the good of the service in lieu of trial by court-martial. His service was characterized as under other than honorable conditions. He completed 1 year, 8 months, and 24 days of net active service with lost time from 31 July 1969 to 25 August 1969, from 01 December 1969 to 28 December 1969, from 15 February 1970 to 15 March 1970, and from 16 March 1970 to 19 January 1972.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military and medical service records. The VA's Joint Legacy Viewer (JLV) and VA and hardcopy medical documentation provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health issues that mitigate his misconduct. There is insufficient evidence that the applicant officially reported or was diagnosed with a mental health condition while on active service. On a 11 Feb 1972 report of medical history, the applicant endorsed "depression or excessive worry" and "nervous trouble of any sort," without any additional elaboration or description. The

resulting report of medical examination on the same date, cleared for discharge from a medical perspective for separation procedures.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed by the VA with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition. The applicant began care with the VA beginning on 24 September 2015. This was initially for medical purposes and was referred to VA mental health beginning on 03 May 2016. He has been continually treated for mental health purposes through 2025, primarily for the diagnosis of major depressive disorder. The applicant noted in multiple sessions that he has had ongoing grief related to the murder of his son in 1990 in Puerto Rico. The applicant noted profound guilt in allowing his son to travel to Puerto Rico that has caused ongoing grief. There was insufficient evidence that any VA mental health treatment or diagnoses were attributed to his time in service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions, which mitigate his misconduct. The applicant began treatment for major depressive disorder through the VA mental health clinic as recent as May 2016.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service. The applicant did endorse symptoms of, "depression or excessive worry" and "nervous trouble of any sort," without any additional elaboration or description. There is insufficient evidence that he was diagnosed with a mental health condition during active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was experiencing a mitigating mental health condition while on active service. The applicant did engage in avoidant misconduct such as repeatedly going AWOL, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition on active service. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 record and medical review, the Board concurred with the opinion of the ARBA Medical Advisor. Based on the available information there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct.

2. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions, which mitigate his misconduct. The applicant began treatment for major depressive disorder through the VA mental health clinic as recent as May 2016.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service. The applicant did endorse symptoms of, "depression or excessive worry" and "nervous trouble of any sort," without any additional elaboration or description. There is insufficient evidence that he was diagnosed with a mental health condition during active service.

c. Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was experiencing a mitigating mental health condition while on active service. The applicant did engage in avoidant misconduct such as repeatedly going AWOL, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition on active service. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

3. The Board considered the applicant's character letters of support attesting to this character, trustworthiness since being discharged. However, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of numerous periods of AWOL. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 8 months, and 24 days of net active service with lost time from 31 July 1969 to 25 August

1969, from 1 December 1969 to 28 December 1969, from 15 February 1970 to 15 March 1970, and from 16 March 1970 to 19 January 1972.

4. Evidence of record shows, at the time of separation, documentation supports the narrative reason for separation properly identified on the DD Form 214. As such, the Board determined under liberal consideration changes to the applicant's narrative reason are not warranted. The Board determined there was insufficient evidence of an error or injustice which would warrant a change in the applicant's RE Code and separation code. Furthermore, the Board determined the applicant, and his counsel has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

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.

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. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

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

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. Paragraph 5-3 (Secretarial Plenary Authority) provided that:

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarter, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

3. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//