

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240006844

APPLICANT REQUESTS correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect the following:

- Item 4a (Grade, Rate or Rank) to reflect "PFC"
- Item 4b (Pay Grade) to reflect "E-3"
- In effect, an upgrade of his character of service

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

- DD Form 149 (Application for Correction of Military Record)
- Personal statement
- Two (2) character statements
- U.S. Army Training Center and Fort Dix orders 215-212
- DD Form 214

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, via personal statement:

a. His rank was incorrect, which made his pay inaccurate. He should have been an E-3, instead of an E-2. He was wrongfully prosecuted, without any court proceedings. They lied about drug possession; he did not have any drugs on him. His depression, substance abuse, and mental health issues kept him from fighting again after being denied three (3) times.

b. When he enlisted in June of 1980, he was excited about joining forces to protect our great nation. He advanced in the ranks, making it all the way to specialist (SPC)/ E-4. However, shortly after, he began to experience extreme racism from his noncommissioned officers (NCOs), drill sergeants, and other high ranking officials. He

worked hard to get promoted and to have it stripped away turned him into something other than himself. He could only take but so much racism and maltreatment, so he decided to do things his way.

c. As far as the drug charges, there were never any drugs found in his possession. If that was true, why would the narrative reasoning be "For the good of the service- In Lieu of Court Martial?" If all of these controlled substances were found in his possession, then why wouldn't they want to court martial him? The drugs were actually found in a lamp in the room that he shared with three other Soldiers. He was never prosecuted for any drugs when they took him down to the station, nor was he ever locked up or held on charges. The whole case was hearsay. He remained in Germany for two months after they so called found these controlled substances in his possession. His expiration of term of service (ETS) was in June 1983; however, he was not discharged until August 1983.

d. He was subjected to constant harassment so that he would quit and give up. He was embarrassed and tired of being singled out because of his race. He had never struck anyone but was once jumped by eight Caucasian guys when he was traveling back to his barracks in Germany. Many years following his military service, life is still a struggle. From dealing with substance abuse, homelessness, unemployment, being wrongly incarcerated for mistaken identity, depression, taking care of a disabled son and many other issues, it still haunts him that he did his time, but did not receive an under honorable conditions discharge.

3. The applicant provides:

a. Two (2) character statements, written by the applicant's mother and former colleague, both of which attest to the unfair and discriminatory treatment he was subjected to, how it mentally affected him, and the struggles he has experienced since his discharge from the military.

b. U.S. Army Training Center and Fort Dix orders 215-212, dated 3 August 1983, reflects he was discharged from the Regular Army (RA), with an effective date of 3 August 1983. The standard name line also reflects his rank as "PV1."

c. DD Form 214, which reflects he was discharged on 3 August 1983 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service – in lieu of court-martial, separation code of KFS, and a reenlistment code of RE-3. He served 3 years and 12 days of net active service this period. It also shows in item 4a (Grade, Rate or Rank) as "PV1" and in item 12h (Effective Date of Pay Grade) as "19 July 1983."

d. The applicant did not provide any documentary evidence to support his claims of having behavioral health issues.

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

a. He enlisted in the Regular Army on 22 July 1980.

b. Based on the excerpt of the applicant's DA Form 2-1 (Personnel Qualification Record), the applicant's promotions/reductions and dates of rank are as follows:

- Private1 (E-1), 22 July 1980
- Private2 (E-2), 22 January 1981
- Private First Class (E-3), 1 July 1981
- Specialist (E-4), 1 December 1982
- Private First Class (E-3), 18 March 1983
- Private2 (E-2), 18 March 1983
- Private (E-1), 18 July 1983

c. On 18 March 1983, the applicant accepted nonjudicial punishment (NJP) for, on or about 7 February 1983, wrongfully have in his possession a smoking device containing an indeterminate amount of marihuana, a schedule 1 controlled substance. His punishment consisted of a reduction to the grade of E-2.

d. The complete facts and circumstances surrounding his separation are not available for review.

e. The applicant was discharged on 3 August 1983 under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial. He served 3 years and 12 days of net active service this period. It also shows in item 4a (Grade, Rate or Rank) as "PV1" and in item 12h (Effective Date of Pay Grade) as "19 July 1983."

5. The applicant stated he was denied three (3) times for an upgrade; however, there is no evidence that he has previously applied to either the Army Discharge Review Board or the Army Board for Correction of Military Records.

6. AR 635-200 states a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge as well as a correction of his rank and paygrade at the time of discharge. The applicant selected PTSD on his application as related to his request. This opine will narrowly focus on the applicant's request for an upgrade and defer the requests regarding rank and paygrade to the Board.

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 22 July 1980.
- On 18 March 1983, the applicant accepted nonjudicial punishment (NJP) for, on or about 7 February 1983, wrongfully have in his possession a smoking device containing an indeterminate amount of marihuana, a schedule 1 controlled substance. His punishment consisted of a reduction to the grade of E-2.
- The complete facts and circumstances surrounding his separation are not available for review.
- Applicant was discharged on 3 August 1983 under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as UOTHC with separation code KFS, and a reenlistment code of RE-3. He served 3 years and 12 days of net active service this period. It also shows in item 4a (Grade, Rate or Rank) as "PV1" and in item 12h (Effective Date of Pay Grade) as "19 July 1983."
- Applicant states he was denied an upgrade three times; however, there is no evidence he applied to either the Army Discharge Review Board or the Army Board for Correction of Military Records.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "his rank was incorrect, which made his pay inaccurate. He should have been an E-3, instead of an E-2. He was wrongfully prosecuted, without any court proceedings. They lied about drug possession; he did not have any drugs on him. His depression, substance abuse, and mental health issues kept him from fighting again after being denied three times. When he enlisted in June of 1980, he was excited about joining forces to protect our great nation. He advanced in the ranks, making it all the way to Specialist (SPC) / E-4. However, shortly after, he began to experience extreme racism from his noncommissioned officers (NCOs), drill

sergeants, and other high-ranking officials. He worked hard to get promoted and to have it stripped away turned him into something other than himself. He could only take but so much racism and maltreatment, so he decided to do things his way. As far as the drug charges, there were never any drugs found in his possession. If that was true, why would the narrative reasoning be "For the good of the service- In Lieu of Court Martial?" If all of these controlled substances were found in his possession, then why wouldn't they want to court martial him? The drugs were actually found in a lamp in the room that he shared with three other Soldiers. He was never prosecuted for any drugs when they took him down to the station, nor was he ever locked up or held on charges. The whole case was hearsay. He remained in Germany for two months after they so called found these controlled substances in his possession. His expiration of term of service (ETS) was in June 1983; however, he was not discharged until August 1983. He was subjected to constant harassment so that he would quit and give up. He was embarrassed and tired of being singled out because of his race. He had never struck anyone but was once jumped by eight Caucasian guys when he was traveling back to his barracks in Germany. Many years following his military service, life is still a struggle. From dealing with substance abuse, homelessness, unemployment, being wrongly incarcerated for mistaken identity, depression, taking care of a disabled son and many other issues, it still haunts him that he did his time, but did not receive an under honorable conditions discharge." The applicant further provides two character statements, written by the applicant's mother and former colleague, both attest to the unfair and discriminatory treatment he was subjected to, how it mentally affected him, and the struggles he has experienced since his discharge from military service.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD.

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 could potentially mitigate his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD 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 after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The complete facts and circumstances surrounding his separation are not available for review. Therefore, it is not possible to determine if a BH condition would mitigate his discharge. However, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the record of NJP, that absence of a charge sheet, the reason for his separation and the character of service he received upon separation. The Board noted that the applicant checked PTSD on his application and provided two reference letters describing discriminatory treatment. The Board found insufficient evidence to determine that the applicant's rank was in error or unjust. The Board considered the review and conclusions of the medical advising official. The Board found: (1) The applicant checked that PTSD was related to his request for relief; (2) There was no medical documentation indicating that the applicant was diagnosed with any BH condition during military service or after his discharge; (3) Absent the facts and circumstances of his separation, and insufficient evidence of a BH condition during his service or after his service, the Board could not determine if there was mitigation for the misconduct that led to his discharge. The applicant did not provide evidence of post-service achievements for the Board to consider in support of a clemency determination. The Board did not find evidence of the applicant being denied due process or Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation and the rank when separated was not in error or unjust. The Board determined that a discharge upgrade was not warranted as a matter of liberal consideration.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

6/11/2025

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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a provides that 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 3-7b provides that 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

d. Chapter 14-4b states, upon determination that a Soldier 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.

//NOTHING FOLLOWS//