

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240006861

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 13 May 2024
- medical documentation, 20 June 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 states he feels there was considerable racism which effected his attitude and performance. Additionally, he has been diagnosed with having schizophrenia and provides medical documentation.
3. On his DD Form 149, he annotates other mental health is related to his request.
4. The applicant enlisted in the Regular Army on 29 January 1975. He was honorably discharged for immediate reenlistment on 12 January 1978.
5. The highest rank he attained was specialist four/E-4.
6. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ):
 - a. On 25 July 1980, for assaulting I.A.M., by striking her in the face with his hand on or about 20 July 1980. His punishment imposed was reduction to the grade of E-3.
 - b. On 16 January 1981, for being the driver of a vehicle involved in an accident on or about 19 September 1980 and wrongfully and unlawfully leaving, and for violating a

lawful general regulation by failing to maintain control over a vehicle on or about 19 September 1980. His punishment was forfeiture of \$150.00 for a period of two months and extra duty for 14 days.

c. On 3 December 1981, for failing to go to his prescribed place of duty, morning formation, on or about 3 December 1981. His punishment was reduction to the grade of E-3, forfeiture of \$50.00, and extra duty for 14 days.

7. The applicant's service record is void of documentation containing the specific facts and circumstances surrounding his discharge processing. However, on 29 March 1982, the separation authority directed the applicant be discharged under the provisions of Army Regulation (AR), 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b(1)(3) by reason of misconduct – frequent incidents of a discreditable nature, reduction to the lowest enlisted grade, and issuance of an Under Other Than Honorable Conditions Discharge Certificate.

8. The applicant was discharged accordingly on 12 April 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-33b, for misconduct – frequent incidents of a discreditable nature with civil or military authorities, in the grade of E-1. His service was characterized as under conditions other than honorable, with reenlistment code RE-4. He was credited with 4 years and 3 months of net active service this period.

9. The applicant petitioned the ABCMR to change his reenlistment code. The request was granted, on 2 April 1987 a DD Form 215 (Correction to DD Form 214) was issued to show his reenlistment code as RE-3, RE-3C.

10. The applicant provides medical documentation dated 20 June 2013, showing his discharge diagnoses was but not limited to cocaine dependency, alcohol dependency, depressive disorder not otherwise specified, history of acid reflex, history of cervical radiculopathy, vitamin d deficient, psychosocial stressor severe, and current global assessment of function 55, highest in the past year unknown.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under conditions other than honorable. He contends he experienced mental health conditions that mitigates 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 29 January 1975; 2) The applicant accepted nonjudicial punishments (NJP) between July 1980- December 1981 for assaulting a woman, being in a motor vehicle accident and leaving the scene; and not being at morning formation; 3) The applicant's service record is void of documentation containing the specific facts and circumstances surrounding his discharge processing. However, on 29 March 1982, the separation authority directed the applicant be discharged by reason of misconduct – frequent incidents of a discreditable nature; 4) On 12 April 1982, the applicant was discharged, Chapter 14-33b, for misconduct – frequent incidents of a discreditable nature with civil or military authorities. His service was characterized as under conditions other than honorable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA for assistance with polysubstance abuse/dependence and homelessness starting predominately in 1997. He has also reported depressive symptoms, and he has been diagnosed with a Depressive Disorder and an Adjustment Disorder with depressive symptoms. There is insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability. The applicant provided hardcopy VA medical documentation from 2013 supporting the previously reported information.

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 condition or experience that mitigates his misconduct. In addition, there is insufficient evidence surrounding the complete events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition or experience.

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 on active service, which mitigates his misconduct. The applicant was diagnosed with

conditions related to depressive symptoms and consistent substance abuse/dependence following his discharge from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions, while he was on active service. The applicant did engage in erratic and avoidant behavior, which could be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. In addition, there is insufficient evidence surrounding complete the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. Upon review of the applicant's service record, the Board determined he served a period of continuous honorable service from 29 January 1975 to 11 January 1978 and his record should reflect that service accordingly.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 12 April 1982, to show Continuous Honorable Active Service from 29 January 1975 to 11 January 1978.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service.


X //SIGNED//

CHAIRPERSON
Signed by:

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 (AR) 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 states 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; 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 sexual assault or sexual harassment was unreported, or 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.

4. 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//