

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240007039

APPLICANT REQUESTS

- upgrade of his general, under honorable conditions discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show award of the Army Achievement Medal
- and a video or telephone hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 8 April 2024
- DA Form 4980-18 (Army Achievement Medal Certificate), 30 April 1985
- DD Form 214, 2 June 1986
- DD Form 215 (Correction to DD Form 214), 15 December 1985

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 indicates on his DD Form 149 that post-traumatic stress disorder (PTSD) is an issue or condition related to his request. He was told he could ask to get his discharge upgraded. He was going through bouts of depression and anxiety.
3. The applicant provides a DA Form 4980-18 showing he was awarded the Army Achievement Medal for distinguishing himself through meritorious achievement during the period 4 April through 19 April 1985.
4. A review of the applicant's service records shows the following:
 - a. On 20 February 1981, he enlisted in the Regular Army for 3 years.

b. On 3 February 1984, he reenlisted for 5 years. He attained the rank of sergeant on 4 June 1985.

c. On 24 February 1985, he was assigned to Troop B, 1st Squadron, 2nd Armored Cavalry Regiment, Germany.

d. On 27 July 1985, he accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being absent without leave (AWOL) from his unit from on or about 13 July 1985 until on or about 20 July 1985. His punishment consisted of forfeiture of \$228.00 pay for 6 months (suspended), restriction and extra duty for 14 days. He did not appeal this punishment.

e. On 21 August 1985, his commanding officer counseled him for disciplinary behavior as the result of drunk and disorderliness in the barracks. He further recommended he not be promoted until improvements were made.

f. On 20 September 1985, he accepted field grade NJP under the provisions of Article 15 of the UCMJ for unlawfully striking Specialist 4 (SP4) JSA___ in the face with his fist on 7 September 1985. His punishment consisted of reduction to SP4/E-4 and restriction and extra duty for 30 days. He did not appeal this punishment.

g. On 7 October 1985, he was reassigned to C Troop, 1st Squadron, 2nd Armored Cavalry Regiment.

h. On 23 December 1985, he accepted company grade NJP under the provisions of Article 15 of the UCMJ for failure to go to 0600 hours formation at G Troop, 1st Squadron, 2nd Armored Cavalry Regiment on 18 December 1985. His punishment consisted of 14 days of extra duty and restriction. He did not appeal this punishment.

i. A memorandum from the Clinical Director, Army Drug Counselor Officer, Alcohol and Drug Prevention and Control Program, dated 9 January 1986, noted he was enrolled in the program on 13 September 1985, but had been unresponsive to counseling and had missed three counseling appointments. The Clinical Director noted his potential for successful rehabilitation was poor.

j. A Military Police Report, ANS- [REDACTED] dated 14 January 1986, shows he was the subject of an investigation regarding a drunk driving report, as the result of a German police patrol routine traffic stop on 16 December 1985, and failure to obey a general lawful order or regulation by operating a motor vehicle on a suspended driver's license. The applicant was detained, released to military police, gave a urine sample, and later returned to his unit.

k. A DD Form 2339 (Summary of Trial by Summary Court Martial), dated 10 March 1986, shows he was convicted of one specification of drunk driving on 16 December 1985: one specification of being drunk on duty on 17 December 1985, and one specification of breaking restriction on 31 December 1985. The sentenced adjudged was confinement for 21 days, reduction to private first class (PFC)/E-3, and forfeiture of \$566.00 pay. On 12 March 1986, the convening authority changed so much of the sentence consisting of 21 days confinement to 21 days restriction and approved the remainder of his sentence.

l. A DA Form 5180-R (Urinalysis Custody and Report Record), dated 25 March 1986, shows a positive test result following a urine specimen collected from him on an unspecified date, tested positive for Tetrahydrocannabinol (THC). The test basis of the specimen custody document was not recorded on this document.

m. A subsequent instance of NJP is not contained in the available records.

n. A medical examination result, dated 17 April 1986, shows he had no physical defects or assignment limitations. He did not elect whether he desired a separation examination.

o. On 5 May 1986, his troop commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for misconduct, and advised him of his rights. His commander noted the reasons for his proposed action: he demonstrated a clear unwillingness to conform to military standards of discipline; he had been in and out of trouble since his arrival to 1st Squadron; he accepted a company grade NJP for AWOL and a field grade NJP for assault in which he was reduced from E-5 to E-4; in October 1985 he was reassigned to C Troop to give him a fresh start, but his misconduct continued; he received a summary court-martial and a field grade NJP in which he was reduced to E-1. His troop commander notified him the least unfavorable characterization he could receive was an under other than honorable conditions characterization of service. He acknowledged his rights.

p. On 6 May 1986, he acknowledged receipt of his commander's separation notification. He consulted with counsel and was advised of the basis of the contemplated separation against him, its effect, and his rights. He waived consideration of his case by an administrative separation board; he waved appearance before an administrative separation board; he elected not to submit statements in his own behalf; and he requested consulting counsel. He understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him. He further understood that as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a

veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

q. On 12 May 1986, his troop commander initiated separation action against him under the provisions Army Regulation 635-200, Chapter 14, for misconduct. He recommended approval of his separation for inconsistent duty performance, breaking restriction, poor off-duty conduct, and several alcohol related offenses.

r. On 15 May 1986, he underwent a mental status evaluation as requested by his command. A DA Form 3822-R shows the chief psychiatrist, a captain of the Medical Corps, found the applicant met the physical retention standards prescribed in Army Regulation 40-501 (Standards of Medical Fitness).

s. On 15 May 1986, the separation authority approved and ordered the applicant's discharge under provisions of Army Regulation 635-200, paragraph 14-12b for misconduct and directed issuance of a General Discharge Certificate.

t. Separation Orders Number 114-7 reassigned him to U.S. Army separation point on 29 May 1986 with a date of discharge of 29 May 1986, unless changed or rescinded.

u. On 2 June 1986, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 14-12c, by reason of misconduct - drug abuse, with a under honorable conditions (general) characterization of service. He was assigned separation code JKK and reenlistment code 3. He completed 5 years, 3 months, and 11 days of net active service with one day time lost from 23 February 1984 to 24 February 1984. He was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon
- Army Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

v. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

w. His records are void of orders awarding him the Army Achievement Medal.

5. On 14 November 2024, the Chief, Case Management Division requested the applicant provide copies of medical or psychiatric documentary evidence supporting the issues he raised regarding depression and anxiety. However, he did not respond.

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

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends PTSD is related to his request. 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 20 February 1981; 2) On 27 July 1985, the applicant accepted nonjudicial punishment (NJP) for being AWOL from 13-20 July 1985; 3) On 20 September 1985, the applicant accepted a NJP for striking a Specialist 4 in the face with his fist; 4) On 23 December 1985, he accepted NJP for failure to report to first formation; 5) On 10 March 1986, the applicant, as a result of summary court-martial, was convicted of one specification of drunk driving; one specification of being drunk on duty, and one specification of breaking restriction; 6) On 25 March 1986, there was evidence the applicant tested positive for marijuana; 7) On 2 June 1986, the applicant was discharged, Chapter 14-12c, by reason of misconduct - drug abuse, with a under honorable conditions (general) characterization of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. There is evidence the applicant was referred to alcohol abuse treatment following his misconduct of assault. A report was provided, on 09 January 1986, by the Clinic Director of the military substance abuse program. The applicant was described to have successfully engaged in treatment till another event of misconduct related to alcohol abuse occurred. Afterward, the applicant discontinued attending treatment, and he was determined to be a poor candidate for rehabilitation. On 15 May 1986, the applicant underwent a Mental Status Exam and was not diagnosed with a mental health condition as a result of this evaluation.

d. A review of JLV provided evidence the applicant began to engage with the VA predominately for assistance with emergency physical concerns, polysubstance abuse/dependence, and homelessness starting in 2006. There was evidence the applicant provided inconsistent reports of his time on active service and history of misconduct from his service record to providers at the VA. However, he did describe experiencing some symptoms associated with PTSD, anxiety, and depression related to his military service. Yet, the applicant has not been diagnosed with service-connected PTSD. The applicant has predominantly attended treatment for substance

abuse/dependence. He was diagnosed with a service-connected Anxiety Disorder (50%SC) in February 2024 as a result of a Compensation and Pension evaluation.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he experienced PTSD on active service, which mitigates his misconduct. The applicant was diagnosed with a service-connected Anxiety Disorder in 2024 by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD on active service, which mitigates his misconduct. The applicant was diagnosed with a service-connected Anxiety Disorder in 2024 by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is insufficient evidence the applicant has been diagnosed with service-connected PTSD. However, he was diagnosed with a service-connected Anxiety Disorder as a result of his description of his military experience and corresponding symptoms many years later. The applicant did engage in erratic and avoidant misconduct such as repeated incidents of misconduct associated with alcohol and substance abuse while on active service, which could be a natural sequelae of an Anxiety Disorder. Yet, there is no nexus between the applicant's diagnosis of an Anxiety Disorder and his misconduct of striking another Soldier in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's Anxiety Disorder; 2) the applicant's Anxiety Disorder does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention 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 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. One potential outcome was to grant partial relief based on the advising official finding mitigation for the applicant's misconduct. However, upon review of the applicant's petition, available military records and the medical review, the Board considered the advising opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a mental health condition or experience that partially mitigates his misconduct.

2. Consideration was given to the Kurta Questions:

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3. The Board notwithstanding the advising official finding sufficient evidence to support the applicant had a mental health condition or experience that partially mitigates his misconduct, found insufficient evidence of mitigating factors to overcome the misconduct of drunk driving, being drunk on duty, and breaking restriction, and tested positive for THC on a urinalysis to warrant relief. The Board determined the applicant sustained a pattern of misconduct, including multiple nonjudicial punishments for AWOL, assault, failure to report, and alcohol-related offenses. The Board determined, despite reassignment and enrollment in the Alcohol and Drug Prevention and Control Program, his performance did not improve, and his rehabilitation potential was deemed poor. The Board agreed the issuance of a general, under honorable conditions discharge was appropriate given the nature and frequency of the offenses.

4. Furthermore, the applicant has not provided official documentation verifying receipt of the Army Achievement Medal. Absent orders or entries in his personnel file confirming the award, the Board cannot authorize its inclusion on his DD Form 214. In accordance with Army policy, discharges and military records are presumed to be administratively correct unless clear and convincing evidence demonstrates otherwise. The applicant has not met this burden. Therefore, the Board finds no error or injustice and denied upgrade of his discharge and correction of his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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.
 - a. 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 (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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. 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 established policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, convictions by civil authorities, and abuse of illegal drugs. 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.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKK" corresponded to "Misconduct-Abuse of Illegal Drugs," and the authority, Army Regulation 635-200, chapter 14-12c.

5. Army Regulation 635-5 (Separation Documents), in effect at the time (1 October 1979), prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. The DD Form 214 is of vital importance to the separating Soldier and must be properly prepared according to prescribed guidance; ensure all information on the DD Form 214 and other separation documents is accurate. Block 13 (Decorations, Medal, Badges, Citations and Campaign Ribbons Awarded or Authorized) state self-explanatory, meaning enter all awards and decorations authorized during the period covered by the DD Form 214.

6. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised 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.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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. 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. 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.

9. Section 1556 of Title 10, U.S. 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//