

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240007047

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under honorable conditions (General) discharge to honorable
- as a new request, correction of his narrative reason for separation with corresponding separation code and separation authority

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 18 March 1982

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080019137 on 19 March 2009.

2. The applicant states:

a. He respectfully requests a review of his DD Form 214 due to potential errors in the character of service, separation code, and narrative reason for separation. He believes these inaccuracies stem from his undiagnosed condition of high-arched feet upon entering the military. During basic training, he wore standard Army-issued boots, which caused injuries to both feet. Despite seeking medical attention on 5 February 1981, his injuries persisted, leaving him in constant pain and impairing his ability to walk and stand comfortably. He contends that these ongoing issues were not adequately addressed during his discharge process.

b. He recalls being prescribed only Valium, an ineffective psychotropic medication, to manage his condition. Struggling with severe pain, he turned to alcohol and Valium in large quantities to numb the discomfort. This coping mechanism quickly became

overwhelming, worsening his depression and leading to uncharacteristic behavior and misconduct. Instead of being referred to a mental health professional for appropriate care, his superiors opted to discharge him. During this challenging time, he was also issued an Article 15 as punishment for being Absent Without Leave (AWOL).

c. On 13 April 2024, the Department of Veterans Affairs (VA) awarded a 70 percent service connection for persistent depressive disorder (dysthymic) with anxious distress. Additionally, the VA granted a 30 percent disability rating for injuries to the left and right foot. Although these determinations were made, no VA records were provided to support the case.

d. He would like the consideration in granting the below box changes to his DD Form 214:

- Box 28 (Narrative Reason for Separation): to reflect "experiencing untreated depression and anxious distress, along with injuries to the left and right foot"
- Box 24 (Character of Service): change to "Honorable" to accurately represent the circumstances and contributions made during service
- Box 25 (Separation Authority): modify to align with decisions made, considering the hardships and medical conditions experienced during service

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

- a. He enlisted in the Regular Army on 23 September 1980.
- b. He served overseas in the U.S. Army Europe in Germany from 17 April 1981 to 16 March 1892.
- c. He accepted nonjudicial punishment for failure to be at this appointed place of duty. His punishment included reduction to private, E-2. The date of nonjudicial punishment is illegible.

d. On 8 February 1982, the applicant's immediate commander informed him of the intent to initiate separation under Army Regulation 635-200, paragraph 5-31, Expedited Discharge Program (EDP). The commander advised the applicant of his rights and outlined the reasons for the proposed discharge, which included:

- failure to report for duty at the proper time and place
- lack of respect for and unwillingness to obey the orders of his superiors and rules of the military
- poor attitude
- failure to show any desire to improve despite numerous counseling sessions inability to adapt to military life

e. On 10 February 1982, the applicant acknowledged with his signature that he had been notified of the basis for the contemplated separation action under the provisions of Army Regulation 635-200, paragraph 5-31 (EDP). He voluntarily consented to the discharge.

f. On 1 March 1982, the separation authority approved the discharge recommendation for immediate separation under the provisions of Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Chapter 5. As a result, the applicant received a General Discharge Certificate.

g. Orders Number 70-46, dated 11 March 1982, discharged the applicant from active duty with an effective date of to be established.

h. On 18 March 1982, he was discharged from active duty with an under honorable conditions characterization of service. His DD Form 214 shows he completed 0 years, 11 months and 0 days of active service with no lost time. It also shows he was awarded or authorized the Marksmanship Qualification Badge w/M-16 Rifle.

4. On 19 March 2009, the ABCMR rendered a decision in Docket Number AR20080019137. The Board found no evidence that the applicant was referred to a medical evaluation board or a physical evaluation board. There is also no evidence of record of any documented mental disorder or unfitting medical condition(s). In addition, there is no evidence of record that shows the applicant was found unfit for retention in military service during the period of service under review. The evidence of record shows the applicant was properly and equitably discharged in accordance with the regulations in effect at the time. Lacking evidence to the contrary, it is determined that all requirements of law and regulations were met, the rights of the applicant were fully protected throughout the separation process, and the appropriate discharge certificate was furnished. The evidence of record shows that the applicant's record of service did not meet the standards of acceptable conduct and performance of duty for Army personnel and therefore, he is not entitled to an honorable discharge.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for an upgrade of his under honorable conditions (general) discharge to honorable, and, as a new request, correction of his narrative reason for separation with corresponding separation code. On his DD Form 293, the applicant indicated Other Mental Health Issues are 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 23 September 1980, 2) he served in Germany from 17 April 1981 to 16 March 1982, 3) he accepted nonjudicial punishment (NJP) [illegible date] for failure to be at his appointed place of duty, 4) on 08 February 1982, the applicant's commander informed him of his intent to initiate separation under AR 635-200, paragraph 5-31, Expedited Discharge Program. The reasons for the proposed action included: failure to report for duty at the proper time and place; lack of respect for and unwillingness to obey the orders of his superiors and rules of the military; poor attitude; and failure to show any desire to improve despite numerous counseling sessions inability to adapt to military life, 5) the applicant was discharged on 18 March 1982, under the provisions of AR 635-200, paragraph 5-31h(2), with a separation code of JGH and reentry code of RE 3, 3C, 6) the ABCMR denied the applicant's previous request for relief on 19 March 2009 as summarized in Docket Number AR20080019137.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service records. There were no in-service medical records available for review. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is 80% service-connected through the VA overall, 70% for Major Depressive Disorder (MDD) 30% for Claw Foot. Two BH VA Compensation and Pension (C&P) examinations were available for review. At the time of his initial examination on 30 April 2018, the applicant was diagnosed with Unspecified Mental Disorder, to which the evaluating provider opined that his condition was not caused by active-duty service or secondary to a foot condition. At his subsequent evaluation on 28 March 2024, the applicant was diagnosed with Persistent Depressive Disorder (Dysthymic) (PDD) with Anxious Distress. The evaluating provider documented that the applicant reported a history of depression and suicide attempt in-service that resulted in treatment at the hospital.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and service connected through the VA with MDD, which is a potentially mitigating condition. This Advisor would contend that the applicant's misconduct is mitigated by his diagnosis of MDD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA for MDD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA for MDD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed and 70% service-connected through the VA for MDD, which is a potentially mitigating condition. His diagnosis of PDD with Anxious Distress is subsumed by his diagnosis of MDD. As there is an association between lack of motivation, lethargy, changes in mood, and depression, there is a nexus between the applicant's misconduct of failure to report, lack of respect and unwillingness to obey orders of his superiors and rules of the military, poor attitude, failure to show a desire to improve, and his diagnosis of MDD. As such, BH mitigation is supported.

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 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 reviewed and non-concurred with the medical advisor's review finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigated his misconduct based on the lack of supporting documentation in his service records.

2. The Board considered the following Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA for MDD.

b. Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA for MDD. Service connection establishes that the condition existed during service.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed and 70% service-connected through the VA for MDD, which is a potentially mitigating condition. His diagnosis of PDD with Anxious Distress is subsumed by his diagnosis of MDD. As there is an association between lack of motivation, lethargy, changes in mood, and depression, there is a nexus between the applicant's misconduct of failure to report, lack of respect and unwillingness to obey orders of his superiors and rules of the military, poor attitude, failure to show a desire to improve, and his diagnosis of MDD. As such, BH mitigation is supported.

Upon reviewing all available documentation, the Board concluded any potential mitigation for the misconduct is outweighed by the lengthy pattern of misconduct leading to the applicant's separation. The Board found the applicant was provided multiple opportunities by his command to overcome his misconduct and failed to do so. As a result, the Board recommends denying relief.

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 amendment of the ABCMR decision rendered in Docket Number AR20080019137 on 19 March 2009. Additionally, the Board determined the evidence presented did not warrant a change to his DD Form 214 ending on 18 March 1982 to change his narrative reason for separation, separation program designator code or separation authority.

4/15/2025


XCHAIRPERSON


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 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. 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.
 - c. 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 interests of the Army. Separation under this

paragraph are effective only if approved in writing by the Secretary of the Army or approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis, but may be used for a specific class or category of Soldiers.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

5. 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

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.

a. 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 on the basis of 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.

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//