

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240007156

APPLICANT REQUESTS: an upgrade of his under other than honorable discharge.

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

DD Form 149 (Application for Correction of Military Record).

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 was fighting severe depression. His mental health is still an issue, because of the training he received. He served in Kuwait, which caused severe trauma. He attempted to talk to others about the issue but no one took him seriously. He has suffered from his mistake and learned. He needs his benefits, so he may receive help.
3. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 17 September 1997.
 - b. DA Form 4187 (Personnel Action) form shows his duty status changed from dropped from rolls to attached/present for duty, effective 17 February 1999.
 - c. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 19 February 1999.
 - d. On 19 February 1999, he requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10,

discharge in lieu of trial by court-martial; his charge shows as absence without leave from 3 January 1999 to 17 February 1999.

e. His commander recommended approval and recommended an under other than honorable conditions discharge.

f. Orders 21-25, 21 January 2000, show the applicant was reduced from Private First Class / E-3 to Private / E-1, effective 4 October 1999.

g. His records are void of the separation authority's approval; however, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- He was discharged on 8 June 2000, under other than honorable conditions
- He was on excessive leave from 20 February 1999 to 8 June 2000 for 475 days
- He completed 2 years, 7 months, and 7 days net active service this period

4. On 15 February 2002, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the character of service and/or reason of his discharge was denied.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends PTSD as related to his request.

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 17 September 1997.
- DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant on 19 February 1999 for absence without leave from 3 January 1999 to 17 February 1999.
- His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharge on 8 June 2000 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He was assigned separation code KFS and RE code 3.
- On 15 February 2002, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the character of service and/or reason of his discharge was denied.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was fighting severe depression. His mental health is still an issue, because of the training he received. He served in Kuwait, which caused severe trauma. He attempted to talk to others about the issues, but no one took him seriously. He has suffered from his mistake and learned. He needs his benefits, so he may receive help. The applicant's current statement is inconsistent with the statement he provided the ADRB on his application dated 10 October 2001, in which he indicated he went AWOL due to not receiving his enlistment bonus.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition. On 27 February 2025, the ARBA Case Management Division requested the applicant provide copies of medical documentation supporting his contention of PTSD. No response was provided by the applicant.

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 mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts 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 post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant asserted PTSD as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The VA electronic record shows no evidence the applicant has been diagnosed or treated for any mental health condition. And while the applicant selected PTSD on his application, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? No.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

//SIGNED//
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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) 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.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An under other than honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta

Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. 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.

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 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.

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//