

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240007170

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement, 25 March 2024
- Letter of Support, 25 March 2024
- Doctor's Letter, 3 December 2024

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 AR20220004496 on 16 November 2022.

2. The applicant states he is requesting an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

a. He was unaware that he was pending a court-martial, and it was not until he saw a copy of his DD Form 214 (Certificate of Release or Discharge from Active Duty) in 2022 that he realized he was discharged in lieu of trial by court martial. No one ever spoke to him about the discharge nor was he advised of the type of discharge he would receive. He is now ineligible for benefits as a Veteran and would like to apply for benefits from the Department of Veterans Affairs (VA). He is unable to do so without an upgrade.

b. He was under the impression he received an administrative discharge because his unit refused to extend him. He would only be able to get help if he returned to Germany and does not believe he was charged with being absent without leave (AWOL). He was told he was free to go, left, and later saw his DD Form 214 showed he was unavailable for signature. The applicant did not see nor discuss the DD Form 214 with anyone, and he was not required to out process. He suffered severe mental

anguish while in the military and sought help from the Chaplain and his Chain of Command when he arrived in Germany. He had no family in Germany and no way of contacting his wife or family since it was before cell phones. He received his military documents from his former mother-in-law after he agreed to pay child support. If he would have known he could have requested a trial, he would have elected one. The applicant marked post-traumatic stress disorder (PTSD) and other mental health on his DD Form 149 as contributing factors related to his request.

3. The applicant provides:

a. A letter of support from Mr. B.J., dated 25 March 2024, wherein he reiterated added the applicant had a hard time dealing with the fact that his wife never arrived at their joint domicile assignment in Germany. He contends the applicant told him, he went to Mental Health, but the unit's goal was to make him a functional member.

b. A statement from Novant Health Rock Hill Family Medicine, dated 3 December 2024, for ongoing medical care for major depressive disorder secondary to traumatic life stressors with time in the military as a contributing factor.

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

a. On 1 July 1982, he enlisted in the Regular Army.

b. Three DA Forms 4187 (Personnel Action) changed the applicant's duty status as follows:

- 20 March 1987 – present for duty (PDY) to absent without leave (AWOL)
- 19 April 1987 – AWOL to dropped from rolls (DFR)
- 12 May 1987 – DFR to returned to military control

c. A DD Form 458 (Charge Sheet) shows on 30 June 1987, court-martial charges were preferred on the applicant for one specification absenting himself with the intent to remain there from permanently, on or about 20 March 1987, remaining so absent in desertion until 12 May 1987.

d. On 30 June 1987, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was guilty of the charges against him or of a lesser included offense
- if his request for discharge was accepted, he may be discharged under other than honorable conditions

- he would be deprived of many or all Army benefits, he may be ineligible for many or all Army benefits,
- he may be ineligible for many, or all benefits administered by the Veterans Administration
- be reduced to the grade of private/E-1

e. On 11 September 1987, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be separated with an under other than honorable conditions discharge.

5. On 5 October 1987, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years, 1 month, and 1 day of active service with 98 days lost time. It also shows he was awarded or authorized:

- Army Achievement Medal (First Oak Leave Cluster)
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

6. On 16 November 2022, the ABCMR rendered a decision in Docket Number AR20220004496. The Board found the applicant's misconduct and his actions to avoid the consequences became the determining factor in the characterization of his service. For that reason, the Board determined there was no basis for granting the applicant's requested relief. A DD Form 215 (Correction to DD Form 214) was issued on 20 March 2023 to reflect "continuous honorable active service from 1 July 1982 to 16 July 1986."

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An under other than honorable conditions discharge is normally appropriate for a member who is discharged for the good of the service/in lieu of trial by court-martial.

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general)

to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 1 July 1982.
- A DD Form 458 (Charge Sheet) shows on 30 June 1987 court-martial charges were preferred on the applicant for one specification of being AWOL on 20 March 1987 and remaining so absent in desertion until 12 May 1987. He requested discharge for the good of the service.
- The applicant was discharged on 5 October 1987 and completed 5 years, 1 month, and 1 day of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts experiencing mental anguish associated with separation from family while stationed in Germany, and he indicated PTSD and "other mental health" as mitigating factors in his misconduct. A letter from a physician at Rock Hill Family Medicine dated 3 December 2024 showed that the applicant was under care for Major Depressive Disorder secondary to traumatic life stressors with time in the military as contributing factors. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed documentation from a community health summary indicating a prescription for an antidepressant in December 2024 and a diagnosis of Major Depressive Disorder.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no in-service mental health records, but the applicant provided a letter from his physician stating he has a diagnosis of Major Depressive Disorder secondary to his experiences in the military. There was also documentation through JLV showing a prescription for an antidepressant medication in December 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant provided medical documentation indicating he has a diagnosis of Major Depressive Disorder since December 2024, which was attributed to his experiences in the military. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board’s consideration.

BOARD DISCUSSION:

After reviewing and 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. After reviewing the applicant’s statement and reviewing the Chapter 10 request submitted and signed by the applicant, the Board found the applicant’s statement untruthful. Therefore, based upon the available documentation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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//

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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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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. Chapter 10 of this regulation states an individual who has committed an offense

or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

3. 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 post-traumatic stress disorder (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.

4. 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, 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.

5. 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.

6. Section 1556 of Title 10, United States 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//