

IN THE CASE OF: [REDACTED].

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007248

APPLICANT REQUESTS: reconsideration of his prior request for:

- an upgrade of his under honorable conditions (General) discharge
- a change in the narrative reason for separation with respective separation code
- a change in the reentry eligibility (RE) code
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- 12 - DA Form 4856 (General Counseling Forms) dated from 29 November 1989 to 5 March 1991
- DA Form 4126-R (Bar to Reenlistment Certificate) dated 1 November 1990
- DA Form 2627 (Record of Proceedings Under Article 15) dated 1 February 1991
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 17 April 1991
- Electronic Health Record dated 1 January 2024
- Department of Veterans Affairs (VA) Rating Decision dated 6 March 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 Numbers AR20110021721 on 26 April 2012 and AR20200000564 on 8 September 2020.

2. The applicant states, as a new contention:

a. He joined the military at the age of 19 years old. He was late for formation a few times, but he excelled in several areas. Due to the remoteness of the location where he was stationed and several challenging events, he began to experience feelings of helplessness, deep sadness, panic attacks, insomnia, dizziness, headaches,

and apathy. His grandmother lost her legs due to diabetes and [REDACTED] in October 1989 impacted his immediate family.

b. In mid-to late 1990, as his situation and symptoms worsened, he voluntarily self-referred himself to the Community Counseling Center for Substance and Alcohol Abuse, Alcohol and Drug Abuse Prevention and Control Program (ADAPCP). His squad leader did not provide any support of additional guidance. He was told that his poor performance, apathy, and behavior were unacceptable and could result in disciplinary measures.

c. His symptoms worsened and he was told that he was overreacting. He did not seek additional help to talk to anyone and continued to receive negative counseling statements that documented his behavior and poor performance. After separation he continued to suffer with other mental issues. He decided to seek medical help from a psychiatrist and was diagnosed with major depressive disorder, recurrent moderate and generalized anxiety disorder, which was later linked to his military service. If he would have received adequate mental health counseling while in service, his life would have been easier to navigate.

3. The applicant provides:

- twelve DA Forms 4856 (General Counseling Forms) which details his lack of performance, failure to repair and failure to report
- DA Form 4126-R (Bar to Reenlistment Certificate) dated 1 November 1990 shows an approved bar to reenlistment
- DA Form 2627 (Record of Proceeding Under Article 15, Uniform Code of Military Justice) dated 1 February 1991 for failure to be at his appointed place of duty.
- an electronic health record dated 1 January 2024 shows a primary diagnosis of major depressive, recurrent, moderate and a secondary diagnose of generalized anxiety disorder.
- VA Rating Decision dated 6 March 2024 which shows the applicant was rated 70% service-connected disability for insomnia and other specified depressive disorder effective 16 October 2023.

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

a. The applicant enlisted in the Regular Army on 6 August 1988.

b. The applicant was formally counseled on twelve separate occasions between 29 November 1989 and 19 February 1991, for reasons including but not limited to:

- failure to repair
- SQT results

- failure to report
- monthly counseling
- failure to attend safety briefing
- bar to reenlistment
- missing formation

c. He received a bar to reenlistment on 1 November 1990 due to multiple counseling statements for failure to report formations or for duty.

d. He accepted nonjudicial punishment (NJP) on 1 February 1991, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), failure to be at the prescribed appointed place of duty on or about 25 January 1991. His punishment included reduction to private first class (PFC), E-3, suspended, to be automatically remitted if not vacated before 13 August 1991.

e. A DA Form 3822 (Report of Mental Status Evaluation) dated 15 March 1991 shows the applicant underwent a command referred mental status evaluation. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

f. On 25 March 1991, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance and recommended a separation with a General Discharge Certificate. The reasons for his proposed action were for the numerous occasions he failed to be at his appointed place of duty at the appointed time. The applicant acknowledged receipt on the same day.

g. On 30 March 1991, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if less than honorable discharge was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge.
- he elected not to submit a statement on his own behalf

h. On 1 April 1991, the immediate commander-recommended separation action against the applicant under the provisions of AR 635-200, Chapter 13, for unsatisfactory

performance. The commander recommended a general, under honorable conditions discharge.

i. The available service record was void of the separation authority approval memorandum.

j. On 17 April 1991, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 8 months, and 10 days of active service. He was assigned separation code "JHJ", reentry code of "3" and the narrative reason for separation listed as "Unsatisfactory Performance. It also shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

5. The applicant was issued a DD Form 215 (Correction to DD Form 214) dated 10 April 2002, which amended his DD Form 214 as follows:

- item 6 (Reserve Obligation Termination Date): 95 10 04
- item 9 (Command to Which Transferred): USAR COM GP (ANL TRG)
ARPERCEN 9700 Page Blvd, St Louis, Missouri 62102
- item 23 (Type of Separation): Release from Active Duty
- item 26 (Separation Code): LBJ

6. On 12 April 2006, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

7. On 26 April 2012, the ABCMR rendered a decision in Docket Number AR20110021721. The Board found the applicant had a number of negative counselings that could have resulted in nonjudicial punishment. His discharge proceedings were conducted in accordance with law and regulations applicable at the time. The character of discharge was commensurate with the applicant's overall military record. Although his command elected not to proceed with nonjudicial punishment for his absences, they clearly demonstrate a pattern of misconduct and show his service did not meet the standards of acceptable conduct warranting an honorable discharge; therefore, his request was denied.

8. On 8 September 2020, the ABCMR rendered a decision in Docket Number AR20200000564. The Board found the applicant was discharged for repeated

misconduct as documented by his negative counselings and his nonjudicial punishment. His commander exercised his authority, indicating that in his opinion, the applicant would likely be a disruptive influence in duty assignments, the circumstances forming the basis for initiation of separation proceedings would likely continue or recur, and the applicant's ability to perform duties effectively was unlikely. The Board further found insufficient evidence of honorable service or post-service honorable conduct that might have mitigated the misconduct that resulted in his discharge characterization. His request was again denied.

9. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

10. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

11. By regulation (AR 635-5-1), provides separation program designators (SPD) are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JHJ is listed with narrative reason "Unsatisfactory Performance," under regulatory authority AR 635-200, Chapter 13.

12. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

13. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his character of service from under honorable conditions (general) to honorable as well as a change in narrative reason, separation code, and RE code. He contends OMH 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:

- The applicant enlisted into the Regular Army on 6 August 1988.
- The applicant was formally counseled on twelve separate occasions between 29 November 1989 and 19 February 1991, for reasons including but not limited to: failure to repair, SQT results, failure to report, monthly counseling, failure to attend safety briefing, bar to reenlistment, and missing formation.
- He received a bar to reenlistment on 1 November 1990 due to multiple counseling statements for failure to report for formations or duty.
- He accepted non judicial punishment (NJP) on 1 February 1991, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for failure to be at the prescribed appointed place of duty on or about 25 January 1991.
- On 25 March 1991, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 13, for unsatisfactory performance and recommended a separation with a general discharge certificate. The reason for the proposed action was that on numerous occasions he failed to be at his appointed place of duty at the appointed time.
- The applicant was discharged on 17 April 1991 from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 8 months, and 10 days of active service with no lost time. He was assigned separation code "JHJ", reentry code "3" and the narrative reason for separation listed as "Unsatisfactory Performance."

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 states, the correction should be made because his discharge was based on unsatisfactory performance that was caused by an undiagnosed mental illness. Although he attempted to find and receive mental health counseling during his time in service, he was not provided the mental health services he needed. He has been diagnosed with General Anxiety Disorder and Major Depressive Disorder, and both mental health conditions have been connected to his military service and started while he was stationed in Germany with the 334th Ord. Company. The applicant indicates the symptoms he had at the time including apathy and loss of interest, are common to Major Depressive Disorder. If he had received the mental health services he needed, he would have been able to change the behavior that led to his discharge.

d. He joined the military at the age of 19 years old. He was late for formation a few times, but he excelled in several areas. Due to the remoteness of the location where he was stationed and several challenging events, he began to experience feelings of helplessness, deep sadness, panic attacks, insomnia, dizziness, headaches, and

apathy. His grandmother lost her legs due to diabetes and the Loma Prieta Earthquake in October 1989 impacted his immediate family. In mid-to late 1990, as his situation and symptoms worsened, he voluntarily self-referred to the Community Counseling Center for Substance and Alcohol Abuse, Alcohol and Drug Abuse Prevention and Control Program (ADAPCP). His squad leader did not provide any support or additional guidance. He was told his poor performance, apathy, and behavior were unacceptable and could result in disciplinary measures. His symptoms worsened and he was told that he was overreacting. He did not seek additional help to talk to anyone and continued to receive negative counseling statements that documented his behavior and poor performance. After separation he continued to suffer with other mental issues. He decided to seek medical help from a psychiatrist and was diagnosed with major depressive disorder and generalized anxiety disorder, which was later linked to his military service. If he would have received adequate mental health counseling while in service, his life would have been easier to navigate.

e. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a mental status evaluation for the purpose of separation dated 15 March 1991. The report notes no psychiatric disorder and cleared him for any action deemed appropriate by Command.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for Mood Disorder. The applicant has not received care via the VA and there is no evidence in JLV of the applicant participating in any behavioral health services. A decision letter from the VA submitted by the applicant states, "service connection for insomnia and other specified depressive disorder is granted with an evaluation of 70 percent effective October 16, 2023". In addition, an electronic health record dated 1 January 2024, shows the applicant was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder but does not indicate ongoing treatment or care.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is minimal but sufficient evidence to support the applicant had a BH condition that mitigates his discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service connected for Mood Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to unsatisfactory performance that included numerous occasions where he failed to be at his appointed place of duty at the appointed time. Given the association between Mood Disorder/Depression and avoidant behavior, there is a nexus between the applicant's BH condition and his failure to be at his appointed place of duty.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was discharged from active duty due to unsatisfactory performance. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant had a behavioral health condition that mitigates his discharge.

Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service connected for Mood Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to unsatisfactory performance that included numerous occasions where he failed to be at his appointed place of duty at the appointed time. Given the association between Mood Disorder/Depression and avoidant behavior, there is a nexus between the applicant's BH condition and his failure to be at his appointed place of duty.

The Board was convinced by the applicant's statement and determined relief was appropriate to amend his narrative reason for discharge and corresponding SPD code and narrative.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 17 April 1991 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

5/5/2025

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. 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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

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3. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

4. Army Regulation 635-5-1 (Separation Program Designators) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the appendices. SPD code JHJ is listed with narrative reason "Unsatisfactory Performance," under regulatory authority AR 635-200, Chapter 13.

5. 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. 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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), in effect at the time, governs eligibility criteria, policies and procedures for enlistment and processing of persons, with or without prior service, into the Regular Army and the U.S. Army Reserve. Reentry eligibility (RE) codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

a. RE-1 applies to persons immediately eligible for reenlistment at time of separation.

b. RE-3 applies to persons who may be eligible with waiver-check reason for separation.

c. RE-4 applies to persons ineligible for enlistment.

7. 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.

8. 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.

9. 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.

10. 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//