

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240007374

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 17 June 2024
- Two character reference letters, 11 June 2024 and 12 June 2024
- Medical progress notes, covering the period July 2023 to 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 Number AR20090017286 on 8 April 2010.

2. The applicant states he would like an upgrade to his characterization of service so he can access his Department of Veterans Affairs benefits, which would enrich his life and others too. He has continued to better himself in all areas of life and continues to be a productive citizen.

3. The applicant provides:

a. Two-character reference letters, from a friend and his pastor, wherein they state the applicant is a great and kindhearted person. He has always been the type of person to go out of his way to be generous with others in their time of need. He is a strong and dedicated worker in his church and takes an active role in the community. He volunteers his time monthly at several church opportunities. He is a solid, stable, and sincere servant in his church.

b. Thirty-eight pages of medical progress notes, covering the period July 2023 to March 2024, detailing his major depression disorder, anxiety, and other mental health issues.

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

- a. He enlisted in the Regular Army on 7 September 1970.
- b. His DA Form 2-1 (Personnel Qualification Record – Part II), item 5 (Overseas Service) shows he served in Korea from 10 January 1991 through 9 January 1992.
- c. His record did not contain, and he did not provide a DD Form 458 (Charge Sheet). However, his record shows he voluntarily requested discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, because he was charged with four specifications of violation of Article 134 (General Article), Uniform Code of Military Justice (UCMJ), in that he did, on three separate occasions between 11 May 1991 and 15 July 1991, wrongfully use an AT&T calling card belonging to other Soldiers, totaling \$2308.98 of value, and for wrongfully and unlawfully making a false statement.
- d. A self-authored statement, dated 26 November 1991, states, it was his first time away from home when he was assigned to Korea. When he got the chance to call home, he felt more secure. At one time he had his own phone card, but someone used the number and made calls. Once his card had been used by others, he did not care anymore and started looking for vengeance. As time passed, he began to realize what he had done was wrong and there was nothing he could do but tell the truth. · He felt that the Army was not for him and was truly hoping to be discharged and given the opportunity to start over.
- e. On an unspecified date, his company level commander recommended disapproval of his request for discharge for the good of the service, under the provisions of AR 635-200, chapter 10. He noted his recommendation was based on the fact that the applicant had been charged with serious violation of the UCMJ which warrant a trial by court-martial.
- f. On an unspecified date, his battalion and brigade level commanders both concurred with the recommendation to disapprove the applicant's request for discharge for the good of the service.
- g. On 7 December 1991, the separation approval authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, chapter 10, with the issuance of an under other than honorable conditions discharge. Additionally, he directed the applicant be reduced to the rank/grade of private/E-1.
- h. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 8 January 1992 under the provisions of AR 635-200, chapter 10, for the good of the service. He completed 1 year,

4 months, and 2 days of net active service. His service was characterized as under other than honorable conditions. He was issued the separation code "KFS" and the reenlistment code "3". Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Qualification Badge with Grenade Bar

5. On 8 December 1996, the Army Discharge Review Board notified the applicant that the Army Discharge Review Board determined that he was properly and equitably discharged, and his request for a change in the character and/or reason of his discharge was denied.

6. On 12 August 2019, in Docket Number AR20090017286, the ABCMR denied his previous request for and upgrade of his under other than honorable conditions characterization of service. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of this case were insufficient as a basis for correction of his records.

7. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a 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. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (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 07 September 1990, 2) he served in Korea from 10 January 1991 through 09 January 1992, 3) his record did not contain, and he did not provide a DD Form 458. However, his record shows he voluntarily requested discharge for the good of the service under the provisions of AR 635-200, chapter 10, because he was charged with four specifications of violation of Article 134 (General Article), Uniform Code of Military Justice (UCMJ), in that he did, on three separate occasions between 11 May 1991 and 15 July 1991, wrongfully use an AT&T calling card belonging to other Soldiers, totaling

\$2308.98 of value, and for wrongfully and unlawfully making a false statement, 4) the applicant was discharged on 08 January 1992 under the provisions of AR 635-200, Chapter 10, For the Good of the Service, with a separation code of KFS, and reentry code of "3," 5) the applicant's previous petition for relief to the ADRB was denied on 08 December 1996 as it was determined that he was properly and equitably discharged, 6) his previous petition to the ABCMR, as summarized in Docket Number AR20090017286, was denied on 12 August 2019.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) 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. Review of JLV shows the applicant is 0% service connected (for treatment purposes only) through the VA for the following conditions: Second Degree Burns, Thigh Muscle Injury, Asthma, Bronchial, Tinnitus, and Impaired hearing. He is not service-connected for any BH conditions. The applicant provided VA medical records as part of his application. Review of the records shows he has been diagnosed with the following BH conditions: Recurrent Major Depressive Episodes (MDD), Moderate (recorded on 06 March 2023), Depressive Episode (recorded 10 February 2023), Stress and Adjustment Reaction (recorded on 10 February 2023), and Adjustment Disorder with Mixed Anxiety and Depressed Mood (recorded on 18 January 2023). A BH note dated 21 February 2024 documented "80% of his depressed mood is due to being unemployed and the other 20% is over his fight for eligibility status at the VA."

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Although VA medical records show he has sought BH treatment through the VA since being discharged and he has been diagnosed with a potentially mitigating BH condition, MDD, he has not been service-connected for any BH conditions, nor did his treating providers specify the onset of his condition(s) as in-service. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct.

2. The Board determine there is insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple violations of Article 134, UCMJ, including wrongful use of other Soldiers' calling cards totaling over \$2,300 and making false statements. The Board acknowledged the applicant's two-character reference letters attesting to his generosity, dedication to his church, and volunteer service. Furthermore, the Board determined the offenses represent serious misconduct and a breach of trust. While the applicant has provided evidence of post-service rehabilitation and community service, the Board found that these factors do not outweigh the gravity of his misconduct or establish an error or injustice in the original discharge. Based on the preponderance Evidence, the Board determined that the characterization of service was proper and equitable at the time of discharge. Therefore, the Board denied relief.

3. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

b. Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

c. Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service medical records available for review. Although VA medical records show he has sought BH treatment through the VA since being discharged and he has been diagnosed with a potentially mitigating BH condition, MDD, he has not been service-connected for any BH conditions, nor did his treating providers specify the onset of his condition(s) as in-service. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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 amendment of the ABCMR decision rendered in Docket Number AR20090017286 on 8 April 2010.

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. 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.

a. 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.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

2. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

3. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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//