

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240007550

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- NGB Form 22 (Report of Separation and Record of Service)
- Army Achievement Medal Certificate, 10 March 1994
- DD Form 1556 (Request, Authorization, Agreement, Certification of Training and Reimbursement), 12 May 1995
- Permanent Orders Number 296-00036, 23 October 1995
- 12-Leave Earning Statement, January to December 1995
- DD Form 616 (Report of Return of Absentee), 14 February 1998
- Orders Number 181-0182, 30 June 1998
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- [REDACTED] Electrician Certificate, 13 March 2003
- The National Joint Apprenticeship and Training Committee, Journeyman Wireman Certificate, 14 March 2003
- Certificate of Participation in the National Electrical Benefit Fund, undated
- Letter, [REDACTED], undated
- Letter, [REDACTED], 13 August 2010
- Certificate, [REDACTED], 13 August 2010
- Resolution 12-2012 Certificate, 21 August 2012
- Notice of Small Business Self-Certification, 21 November 2013
- Letter, [REDACTED], 6 June 2016
- Letter, [REDACTED], 29 September 2016
- 38-Character References

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:

a. He has prior service in the Army National Guard. On 31 July 1992 he enlisted in the Regular Army. In basic training he received the distinction of Honor Graduate, the Patton award and a letter of commendation from the battalion commander.

b. His son from his second marriage was born in [REDACTED]. The costs of a newborn on an E-1 salary caused him to accumulate debt. He did a tour in Korea from May 1994 to May 1995. On 11 June 1995 he had a permanent change of station (PCS) from Korea to Fort Riley, KS. He immediately joined his unit in the field for training. He was unable to file his PCS paperwork until they returned from the field. He was informed that the government overpaid him and that his pay would be reduced.

c. His multiple debts which included child support, his AAFES (Army Air Force, Exchange Services) account, and Army deductions, left him with a net pay of \$0 for two months (July and August) and a total of less than \$2,000 from June through December. He was provided base housing, had no money for food, transportation, or the ability to send money home to support his family. He was forced to eat out of the dumpster.

d. During this difficult time, he tried to find help, and talked with his chain of command and the chaplain. The chaplain funds could not help, because his family was not in [REDACTED] and he could not afford to get them there. He had not seen his son in over a year. He was also denied help from the Army Community Service. His company commander warned him that if he left to see his family he would "Article 15 him to the max" and "if the Army wanted him to have a family, they would have issued him one."

e. On about 20 December 1995, they pinned on his meritorious service ribbon and three-year service ribbon; yet they still would not help him fix the problem of no living wage and no family. His most recent leave earning statement (LES) was \$7.13. He thought that if he signed a contract saying he would lay down his life for his country they would pay him. But, at an average of \$330 a month for a family of three, he was not getting paid enough to survive. The combined stresses of coming out of a declared combat zone, fearing the loss of a second wife and child, and surviving with little access to food or hygiene, definitely played a role in his decision. He loved the Army and accepted that he incurred the debt, but he could no longer carry on with no food, transportation, and not being able to support or see his family.

f. He felt the Army deserted him after he risked his life in a declared combat zone. He told his company commander that he would be at his home of record; his mother bought him a bus ticket and he left the same day.

g. He worked as a blacktop and construction worker to support his family. Reflecting back, he can see that his decision was not the most rational. However, as a young man most likely experiencing post-traumatic stress disorder (PTSD), being separated from his new family, and having pursued all the avenues he could conceive of to get assistance, it was all he could think to do at the time.

h. His friend Colonel [REDACTED] informed him that anyone in his company could have signed a form to reconstruct the payback of his debts. He later obtained help from his congressman to relieve him from his AAFES debt.

i. He graduated from a four-year trade school and became an electrician. He started his own company and employed a number of veterans. He suffered two heart attacks, a stroke and survived a heart transplant. Now, he is evaluating what is important in life. He wants to take his place among his brothers and sisters of the armed services. To this day, he would reenlist or serve in any capacity for his country if he was able.

3. The applicant provides:

a. A certificate awarding him the Army Achievement Medal while assigned as a driver for Delta Company, 3rd Battalion, 69th Armor, from 4 January 1993 to 5 May 1994.

b. A DD Form 1556 (Request, Authorization, Agreement, Certification of Training and Reimbursement) that shows his position as 19 Kilo Gunner, during a training on 12 May 1995, while assigned to Fort Riley, KS.

c. Permanent Order 26-00036, issued by Headquarters, 1st Infantry Division (Mechanized) and Fort Riley, KS, 23 October 1995, that shows his award of the Army Good Conduct Medal for the period 18 September 1992 through 17 September 1995.

d. Leave and Earning Statements for the period January to December 1995 that shows various debts and allotments.

e. A DD Form 616 (Report of Return of Absentee), that show the applicant was returned to military control on 14 February 2018.

f. A Certificate issued by the [REDACTED] that show the applicant was recognized as a journeyman electrician.

g. A Certificate issued by The National Joint Apprenticeship and Training Committee, that show the applicant was recognized as a journeyman wireman.

h. A Certificate of Participation in the National Electrical Benefit Fund, issued to the applicant, undated.

i. A letter issued by [REDACTED] (applicant's business), to The Bureau of Minority and Women Business Opportunities. This letter is a request/application for minority business status to another organization, undated.

j. A Certificate issued by the [REDACTED], to [REDACTED] that show they are recognized as a certified business enterprise, 13 August 2010.

k. A Certificate that shows the applicant as the manager for the [REDACTED] who placed second in the district 6 Clarence Boyd Tournament, 21 August 2012.

l. A Notice of Small Business Self-Certification, 21 November 2013 issued by the [REDACTED] to [REDACTED]. This notice shows the applicant's business type as construction contractor.

m. A letter issued by [REDACTED], 6 June 2016, that shows [REDACTED] Incorporated in good standing of local union number 143.

n. A letter issued by [REDACTED], 29 September 2016, that shows the approval of the applicant's request/recognition as a Minority Business Enterprise.

o. 38-Character references that show the following:

(1) A letter issued by his father, that show the applicant is a good son, father and businessman. The fact that he proved to be an excellent Soldier and outstanding citizen should be a good reason to reconsider his discharge from the Army.

(2) A letter issued by his friend, retired Lieutenant [REDACTED] [Applicant's] financial difficulties motivated him to make a difficult decision, not because he disliked Army life. His commander's response "If the Army wanted you to have a wife, they would have issued you one." He is familiar with that irresponsible comment. In this situation he would have recognized the [applicant] had a serious problem and contacted the finance office to negotiate a deal. It was the commanders responsibility to take action.

(3) A letter issued by [REDACTED] that show he worked with [applicant] on projects at [REDACTED]. [Applicant] went without paying himself to ensure his employees got paid. Despite his discharge and health challenges he remained honorable.

(4) A letter issued by his friend [REDACTED] that show the applicant may have had family issues, and this is common; the Army should have taken that into consideration.

(5) A letter issued by his brother [REDACTED] and sister-in-law [REDACTED] that show the applicant is generous and loyal.

(6) A letter issued by his fellow coach in the little league Doctor [REDACTED] that show the applicant cared for his players and exhibited resilience during his heart transplant.

(7) Several letters issued by friends and co-workers that state the applicant was an excellent worker, businessman that employed veterans, dependable and trustworthy, good reputation as a small businessman; and his health problems led to him closing his business.

(8) A letter issued by his transplant coordinator, Doctor [REDACTED] that show he has provided care for [applicant] for over four years. [Applicant] overcame obstacles, both mental and physical, and maintains a positive attitude.

(9) A letter issued by various friends that show applicant was the vice president of the local midget football program and local high school fly fishing club. Many times, financing trips and working with kids with special needs.

(10) Several letters issued by various family members, that show applicant has incredible character, dedicated, and cares for his family. Provides shelter to people that need a place to stay, mentored young adults, supports the extended family and does occasional electrical work when needed. [Applicant's] mother suffered from depression and a rare form of dementia. She was mentally ill and died young. His father was strict and had a volatile temper. All the boys in the family joined the military at a young age.

(11) A letter issued by a friend [REDACTED] that shows the [applicant] formed a second team for kids that was cut from the baseball team and purchased them uniforms.

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

- a. The applicant enlisted in the Regular Army on 18 September 1992.

b. A DD Form 616 and USAREC Form 225 (Telephone or Verbal Conversation Record), shows on 14 February 1998 the applicant was apprehended by civilian authorities in Camphill, PA and returned to military control.

c. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 13 February 1996 for one specification of being AWOL from on or about 29 December 1995 until on or about ---.

d. The available service record is void of the separation processing documents.

e. On 7 July 1998, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 7 months, and 22 days of active service with 11 months and 26 days of foreign service. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3.

(1) He was awarded or authorized the Army Achievement Medal (2nd Award), Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Expert Marksmanship Qualification Badge with Pistol Bar (M9MM), and Marksman Marksmanship Qualification Badge with Hand Grenade Bar.

(2) Block 18 (Remarks) – has entries but does not show service in an imminent danger zone.

(3) He has lost time under USC 972 from 29 December 1995 to 13 February 1996.

5. On 28 January 2025, a member of the Defense Finance Accounting Services staff provided email verification to confirm the applicant served in Korea from 12 May 1994 to 9 May 1995 (11 months and 27 days).

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

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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or 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 other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition 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 18 September 1992.
- A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 13 February 1996 for one specification of being AWOL from on or about 29 December 1995 until on or about ---.
- The applicant was discharged on 7 July 1998 and completed 3 years, 7 months, and 22 days of net active service with 11 months and 26 days of foreign 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 he was under significant financial stress and provides a compelling account of his experience, and he indicated "other mental health" as a mitigating factor in his misconduct. The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a 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 no history of mental health related treatment or diagnoses.

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 at the time of the misconduct. There were no mental health records from his time in service or post-discharge.

(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. Records show he had foreign service in Korea from 1994 to 1995.

(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 offers a compelling explanation of the events leading up to his misconduct, and he discussed stress associated with being a young father with significant financial burdens. 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. There is insufficient evidence, beyond self-report, of a mitigating mental health condition.

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 the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 applicant was charged with absenting himself from his unit, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. However, despite his long period of being absent without leave, the Board noted the applicant provided 38 credible letters of support for clemency consideration. The Board determined an upgrade to under honorable conditions (General) warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input 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 7 July 1998 to show an under honorable conditions (General).

5/12/2025

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. 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. 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 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 for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
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 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; 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 (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//