

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240007570

APPLICANT REQUESTS: an upgrade of her late husband's under conditions other than honorable characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- State Death Certificate, 30 November 2022

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, the surviving spouse of a deceased service member (SM), states the SM's discharge should be upgraded to account for the post traumatic stress disorder (PTSD) he suffered as a result of witnessing his best friend and fellow Soldier drown while in service. The applicant witnessed the SM struggle with changes in physical health, mental health, and behavior. Before the SM's joined the military, he was funny, gentle, and happy most of the time. After his discharge, he suffered severe high blood pressure in his teens, night terrors, severe mood swings, alcoholism, and antisocial behavior.
3. The applicant provides the SM's death certificate, which shows he passed away on 30 November 2011.
4. The Servicemember's record shows:
 - a. He enlisted in the Regular Army on 2 November 1972.
 - b. On 10 July 1973, the SM accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failure to go at the

prescribed time to his appointed place of duty on or about 2 July 1973. His punishment included forfeiture of \$25.00 per month for a period of one month and 7 days restriction.

c. Headquarters, 1st Battalion, 35th Infantry (The Cacti), 2d Brigade, 25th Infantry Division, Special Court-Martial Order Number 16, 27 November 1973, shows the SM was convicted of the following violations:

(1) Charge 1, Article 86 (Absent without Leave (AWOL)):

(a) Specification 1: for failure to go at the time prescribed to his appointed place of duty on or about 5 September 1973.

(b) Specification 2: for failure to go at the time prescribed to his appointed place of duty on or about 9 September 1973.

(c) Specification 3: for failure to go at the time prescribed to his appointed place of duty on or about 14 September 1973.

(d) Specification 4: for failure to go at the time prescribed to his appointed place of duty on or about 16 September 1973.

(2) Charge 2, Article 91 (Insubordinate Conduct), Specification: having received a lawful order from Staff Sergeant (SSG) [REDACTED] his superior commissioned officer, to be prepared for inspection by 1100 hours, or words to that effect, willfully disobey the same.

(3) Charge 3, Article 109 (Property Damage), Specification: on or about 20 October 1973, willfully and wrongfully damage by kicking a soft drink machine, of some value, the property of Oahu Amusement and Vending Inc.

(4) The sentence was adjudged on 20 November 1973. His punishment consisted of confinement 10 days and reduction to the grade of private/E-1.

(5) On 23 November 1973, the sentence was approved and duly executed.

d. On 30 January 1974, the SM accepted NJP under the provisions of Article 15, UCMJ, for:

(1) on or about 17 January 1974, having received a lawful command from second lieutenant [REDACTED] his superior commissioned officer, to get up and stand next to SSG [REDACTED] and watch the class, did, willfully disobey the same.

(2) on or about 22 January 1974, failed to go at the prescribed time to his appointed place of duty on or about.

(3) His punishment included forfeiture of \$76.00 per month for a period of one month and 14 days extra duty.

e. On 10 January 1975, the SM's immediate commander notified the SM of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 13, for unfitness. The commander informed the SM he had the right to present his case before a board of officers, submit statements on his own behalf, be represented by legal counsel, and waive his rights in writing.

f. On 13 January 1975, the SM acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for unfitness under AR 635-200, chapter 13.

(1) He requested consideration of his case by a board of officers

(2) He requested a personal appearance before a board of officers

(3) He elected to not submit statements on his own behalf

(4) He elected to wave his right to have a psychiatrist conduct his mental status evaluation.

(5) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

g. On 13 January 1975, the SM's immediate commander recommended the SM appear before a board of officers, convened under the provision of AR 635-200, chapter 13, to determine whether he should be discharged before the expiration of his term of service. The SM's immediate commander recommended he be discharged because of frequent incidents of discreditable nature against the military authority. (Note: The board proceedings are not available for the Board to review.)

h. On 17 January 1975, the SM's battalion level commander recommended approval of the SM's separation under the provisions of AR 635-200, chapter 13, for unfitness. The commander noted "The SM has been given every possible assistance to improve his duty performance. He desires an honorable discharge but does not appear to understand that he must contribute to his own success. It appears to be in the best interest of the U.S. Army to discharge the SM."

i. On 21 January 1974, the SM's brigade level commander recommended approval of the SM's separation under the provision of AR 625-200, chapter 143, for unfitness.

j. On 6 March 1975, the separation authority approved the SM's discharge under the provisions of AR 635-200, chapter 13 for unfitness and directed the SM be issued an undesirable discharge certificate.

k. The SM was discharged on 17 March 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, chapter 13, in the rank/grade of private/E-1, and his service was characterized as under conditions other than honorable. He completed 2 years, 4 months, and 6 days of net active service with 10 days lost time. He was assigned the separation code of JLB and the RE code of 3. Item 26 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the National Defense Service Medal.

5. There is no indication the SM applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

6. Regulatory guidance states when an individual is discharged under the provisions of Chapter 13, AR 635-200 for unfitness or suitability, an under conditions other than honorable characterization of service is normally appropriate.

7. The Board should consider the SM's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her late husbands under other than honorable conditions (UTOHC) characterization of service. A Georgia Death Certificate provided by the applicant shows the Service Member passed away on 30 November 2022. On the DD Form 149, the applicant contends that the Service Member's (SM) discharge was related to Posttraumatic Stress Disorder (PTSD) due to witnessing his best friend and fellow Soldier drown while they were in service together. 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 SM enlisted in the Regular Army on 02 November 1972, 2) on 10 July 1973, the SM received an Article 15 for failure to go at the prescribed time to his appointed place of duty, 3) Special Court-Martial Order Number 16 dated 27 November 1973 shows the SM was convicted of four separate specifications of failure to go at the time prescribed to his appointed place of duty (05 September 1973; 09 September 1973; 14 September 1973; 16 September 1973), disobeying a lawful order, and willful and wrongful damage of property, 4) on 30 January 1974, the SM received an Article 15 for disobeying a

lawful order and failure to go at the prescribed time to his appointed place of duty, 5) on 13 January 1975, the SM's immediate commander recommended the he appear before a board of officers, convened under the provision of AR 635-200, chapter 13, to determine whether he should be discharged before the expiration of his term of service. The SM's immediate commander recommended he be discharged because of frequent incidents of discreditable nature against the military authority, 6) the SM was discharged on 17 March 1975 under the provisions of AR 635-200, Chapter 13-5a, with a separation code of JLB and reentry code of RE-3.

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. There were no medical records provided for review as part of the application. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. On the DD Form 149, the applicant indicated that she witnessed her late husband struggle with changes in his physical and mental health and behavior after being discharged from the military. She stated that after his discharge he suffered "severe high blood pressure in his teens, severe mood swings, alcoholism, and antisocial behavior."

d. A review of JLV was void of medical information. The SM was not service-connected through the VA for any conditions.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the SM had a condition or experience during his time in service that mitigated his misconduct. However, the applicant contends that the SM's misconduct was related to PTSD, and, per liberal guidance, the 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 the SM's 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. A review of records was void of any BH diagnosis or treatment history for the SM during or after service and the applicant provided no medical documentation supporting the

assertion of PTSD. In absence of documentation supporting her assertion there is insufficient evidence to establish the SM's misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. However, the applicant contends that the SM's misconduct was related to PTSD, and, per liberal guidance, her assertion is sufficient to warrant 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 not 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 conduct and the reason for separation. The applicant was separated for unfitness. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends the SM's 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. A review of records was void of any BH diagnosis or treatment history for the SM during or after service and the applicant provided no medical documentation supporting the assertion of PTSD. In absence of documentation supporting her assertion there is insufficient evidence to establish the SM's misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. However, the applicant contends that the SM's misconduct was related to PTSD, and, per liberal guidance, her 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
█	█	█	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.

6/6/2025

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 (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set 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 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.

b. 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.

c. Chapter 13 establishes policy and provides procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual when it is clearly established that:

(1) despite attempt to rehabilitate or develop him as a satisfactory soldier, further effort is unlikely to success or

(2) Rehabilitation is impracticable, or he is not amenable to rehabilitation and/or personal history record.

(3) An individual separated by reason of unfitness will be furnished an undesirable discharge certificate, except that an honorable or general discharge certificate may be issued if the individual has been awarded a personal decoration or if warranted by the particular circumstances in his case.

3. 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, paragraph 13 for unfitness would receive a separation code of "JLB."

4. 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.

5. 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.

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 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.

7. 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.

//NOTHING FOLLOWS//