

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240007594

APPLICANT REQUESTS: 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 Letters (two)

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 that while stationed at Fort Hood, Texas, he received a call informing him that his sister had committed suicide with his gun that he had left home prior to going to basic training. He requested leave to attend the funeral; however, his first sergeant (1SG) denied his request. This caused him to become unprofessional and he decided to go absent without leave (AWOL), so he could attend the funeral. For many years, he has dealt with the guilt of his sisters' death. He has been mentally unstable, had continuous nightmares, chronic pain in his knees, back and ankles, and he has even thought about taking his own life. Lastly, he is seeing a mental health doctor and has been diagnosed with anxiety, depression, Post-Traumatic Stress Disorder (PTSD), and he has been prescribed several medications.

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

- a. He enlisted in the Regular Army on 3 August 1993.
- b. On 15 July 1994, he was reported as AWOL and remained absent until he returned to military authorities on 24 May 1996.

4. On 29 May 1996, court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL on or about 15 July 1994 and remained absent until on or about 24 May 1996.

5. On 30 May 1996, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, request for discharge in lieu of trial by courts-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

b. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws. He did not submit a statement in his own behalf.

6. On 18 June 1996, the commander recommended approval of the applicant's request for discharge. His commander noted that the Soldier had become disillusioned with the military and retention was not in the best interest of the Army.

7. On 28 June 1996, the separation authority approved the applicant's request for discharge in lieu of trial by courts-martial and directed his discharge UOTHC.

8. On 24 July 1996, the applicant was discharged. His DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He completed 1 year, 1 month, and 3 days of net active service this period with 677 days of lost time.

9. On 26 April 2000, the Army Board for Correction of Military Records (ABCMR) considered the applicant's request for an upgrade of his character of service. The Board determined the applicant's separation was both proper and equitable and denied his request for relief.

10. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

11. 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, including PTSD, that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 3 August 1993.
- On 29 May 1996, court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL on or about 15 July 1994 and remained absent until on or about 24 May 1996. He requested discharge in lieu of trial by courts-martial.
- The applicant was discharged on 24 July 1996 and completed 1 year, 1 month, and 3 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his sister committed suicide with his gun that he had left at home prior to going to basic training, and he requested leave to attend her funeral, which was denied by his first sergeant. He expressed feelings of guilt related to his sister's death, and he indicated he has been diagnosed with anxiety, depression, and PTSD. He indicated PTSD and "other mental health" as issues or conditions related to his request. The application was void of any mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated mental health treatment through the VA on 21 December 2023, and he reported symptoms of depression and anxiety, which were attributed to his sister's death and tinnitus. He was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood, and he was provided with a referral to community care for psychotherapy and a referral to VA medication management. He was started on an antidepressant and a medication for sleep. Documentation in February 2025 indicated that the applicant has been referred to community care for both therapy and medication, but records are not viewable through JLV.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no records of any mental health conditions from his time in service, but VA records show a diagnosis of Adjustment Disorder with mixed anxiety and depressed mood in 2023. The applicant appears to be engaged in mental health treatment through a non-VA community care provider, but those records are unavailable.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant has been diagnosed with an Adjustment Disorder by the VA in 2023 and has utilized VA and community care for mental health treatment. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The applicant did report experiencing a traumatic loss, the suicide of his sister, while on active service. 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. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for 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. The evidence of record shows the applicant was charged with being AWOL from on or about 15 July 1994 and remained absent until on or about 24 May 1996, 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. The Board also reviewed and concurred with the medical advisory noting that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Therefore, the Board denied relief.

2. 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 asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no records of any mental health conditions from his time in service, but VA records show a diagnosis of Adjustment Disorder with mixed anxiety and depressed mood in 2023. The applicant appears to be engaged in mental health treatment through a non-VA community care provider, but those records are unavailable.

b. 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.

c. 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 has been diagnosed with an Adjustment Disorder by the VA in 2023 and has utilized VA and community care for mental health treatment. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The applicant did report experiencing a traumatic loss, the suicide of his sister, while on active service. 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. However, the applicant contends he was

experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for 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.

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. 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.
4. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//