

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20240007615

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 AR20110011336 on 20 December 2011.

2. The applicant states, in effect, his discharge should be upgraded due to abuse, hazing, and misconduct by first sergeant (1SG) and commander (Cdr). His discharge happened 25 years ago and has created anxiety and mental disorder per his Veterans Affairs (VA) doctor he was hazed and mistreated.

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

a. Having had prior service in the Regular Army (RA), he enlisted immediately in Alabama Army National Guard (ALARNG) on 4 January 1995.

b. On 9 January 1995, he was discharged from active duty with an honorable characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 12a (Date Entered Active Duty this Period) 17 July 1992
- item 12b (Separation Date this Period) 9 January 1995
- item 12c (Net Active Service this Period) 2 years, 5 months, and 3 days

c. NGB Form 22 (Report of Separation and Record of Service) shows the applicant entered service this period on 10 January 1995 and was honorably released from the ALARNG in the rank/grade of specialist (SPC), effective 27 January 1995.

d. He enlisted in the RA on 23 August 1999.

e. He received nonjudicial punishment on 20 October 1999 for the below violations of the Uniform Code of Military Justice and his punishment consisted of reduction to private/E-1, suspended to be automatically remitted if not vacated before 16 April 1999, forfeiture of \$100.00 per month for two months and 45 days of extra duty and restriction:

- 1 October 1999, without authority, he failed to go to 0600, Physical Fitness (PT) formation located behind building 1090
- On or about 1 October 1999, as a result of wrongful previous overindulgence in intoxicating liquor or drugs incapacitated for the performance of your duties
- 7 October 1999, without authority, he failed to be at the entire duty

f. DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) dated 10 December 1999, shows his suspended punishment was vacated because on 18 November 1999 through 24 November 1999, without authority, he absented himself from his unit.

g. On 13 January 2000, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12c, commission of serious offenses. He acknowledged on 13 January 2000.

h. On 13 January 2000, he was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him. He requested his case be considered by an administrative separation board and a personal appearance before the board.

i. Memorandum, Subject: Waiver, PVT S.R.W., dated 7 December 2000, indicated that after consulting counsel he voluntarily waived consideration of his case by an administrative separation board and did not submit statement on his behalf.

j. His commander/chain of command recommend approval and that his character of service be under other than honorable conditions.

k. On 9 February 2000, the separation authority approved separation; he directed an under other than honorable conditions discharge be issued.

l. Accordingly, he was discharged under other than honorable conditions on 19 February 2000. He completed 5 months and 23 days net active service this period and had lost time from 31 December 1999 to 3 January 2000.

4. His application states he provided disability claim, health reports, character references and QTC (Leidos QTC Health Services) as documentary evidence; however, they are unavailable for the Board to review.

5. In his previous request (AR20110011336) on 20 December 2011, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

6. 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.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He selected MST, PTSD, Reprisal, and OMH on his application 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:

- Applicant enlisted in Alabama Army National Guard (ALARNG) on 4 January 1995, with prior service in the Regular Army (RA).
- On 9 January 1995, he was discharged from active duty with an Honorable characterization of service. His DD form 214 show in items:
- 12a (Date Entered Active Duty this Period) 17 July 1992
- 12b (Separation Date this Period) 9 January 1995
- 12c (Net Active Service this Period) 2 years, 5 months, and 3 days
- Applicant re-enlisted in the RA on 23 August 1999.
- Applicant received nonjudicial punishment on 20 October 1999 for the following UCMJ violations:
- 1 October 1999, without authority, he failed to go to Physical Fitness (PT) formation
- 1 October 1999, as a result of wrongful previous overindulgence in intoxicating liquor or drugs was incapacitated for the performance of his duties
- 7 October 1999, without authority, he failed to be at the entire duty
- DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) dated 10 December 1999, shows his suspended punishment was vacated because on 18 November 1999 through 24 November 1999, without authority, he absented himself from his unit.

- Applicant was discharged on 19 February 2000, under the provisions of Army Regulation 635-200, Chapter 14 – 12c, with an under other than honorable conditions characterization of service. His DD Form 214 shows he was assigned separation code JKQ, his narrative reason for separation listed as “Misconduct”, with reentry code 3.

c. Review of Available Records: The Army Review Board Agency’s (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states, his discharge should be upgraded due to abuse, hazing, and misconduct by his first sergeant (1SG) and commander (Cdr). His discharge happened 25 years ago and has created anxiety and mental disorder, per his Veterans Affairs (VA) doctor, he was hazed and mistreated.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 50% service connected for PTSD. The record indicates the applicant has been receiving behavioral health care services via the VA since October 2024.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to failure to report, intoxication, and AWOL. He is service connected for PTSD and asserts experiencing MST. Given the association between PTSD and avoidant behavior, there is a nexus between the applicant’s BH condition and his misconduct of being AWOL and his failure to report. In addition, given the association between PTSD and the use of substances/alcohol to cope with the symptoms of his BH condition, his intoxication while on duty is also mitigated.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, medical review, and regulatory guidance were carefully considered. The majority of the Board members concurred with the medical advisory official who found sufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. However, the majority of the Board members found due to his multiple infractions, he did not warrant a full grant to honorable. On the other hand, the minority Board member did not concur with the medical review and noted that the applicant did not mention any behavioral health issue in 2011, when he submitted his first application. It was only when he was denied and requested a reconsideration that he now believes he had a BH condition. Since the minority Board member did not find the applicant's claim credible, they voted to deny relief.

2. 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 asserts MST, PTSD, Reprisal, and OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to failure to report, intoxication, and AWOL. He is service connected for PTSD and asserts experiencing MST. Given the association between PTSD and avoidant behavior, there is a nexus between the applicant's BH condition and his misconduct of being AWOL and his failure to report. In addition, given the association between PTSD and the use of substances/alcohol to cope with the symptoms of his BH condition, his intoxication while on duty is also mitigated.

The Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's characterization of service to general.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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 19 February 2000, to show he received an under honorable conditions (General) Discharge.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains upgrading his characterization of service to fully honorable.

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. 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.
2. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management; it explains separation document preparation, distribution, and correction. Paragraph 5-6 (Rules for Completing the DD Form 214 (Certificate of Release or Discharge from Active Duty) provides detailed instructions for data required in each block of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The DD Form 214 is a historical document that should reflect the record as it existed at the time the DD Form 214 was created.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel states:
 - a. 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. 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. Under Other Than Honorable Conditions states a discharge under other than honorable conditions are an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct 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.

4. 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.

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, 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.

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 (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.

//NOTHING FOLLOWS//