

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240007755

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record), 25 April 2024
- Three letters of recommendation, 13 March 2024

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, in 1994 he suffered a traumatic hand injury resulting in extended hospitalization. After a month, he was released from the hospital and returned to duty. Still in significant pain, he was ordered to conduct tasks which further inflicted pain and suffering. Despite repeated visits to the hospital, he had enough. He coped with depression, anxiety, and perceived harassment which caused him to turn to marijuana. He was subsequently discharged under other than honorable conditions. He feels as though he has served his punishment for his behavior as a 22-year-old Soldier. He is now a contributing member of society with a great family.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 4 June 1993.
 - b. His DA Form 2-1 shows in:
 - Item 5 (Overseas Service) – he was credited with foreign service in Korea from 2 November 1993 to 2 November 1994

- Item 9 (Awards, Decorations, and Campaigns) – he was awarded the National Defense Service Medal and Army Service Ribbon
- Item 35 (Current and Previous Assignments) - he was assigned to Headquarters and Headquarters Battery, 8th Field Artillery Battalion, 2d Infantry Division, Korea from 6 November 1993 to 1 November 1994

c. The applicant's record did not contain and he did not provide evidence of a positive urinalysis test or use of marijuana. Additionally, his record is void of a separation packet containing the specific facts and circumstances surrounding the processing of his discharge.

d. The applicant was discharged from active duty on 20 November 1995. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c(2), by reason of misconduct, in the rank/grade of private/E-1, and his service was characterized as under conditions other than honorable conditions. He completed 2 years, 5 months, and 17 days of net active service. He was assigned the separation code of JKK and the RE code of 4. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the following:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

4. The applicant provided three letters of recommendation from his friends and fellow military veterans wherein they state the applicant is an honorable and caring person. He is a leader, mentor, and often shares his wisdom and good fortune with all who he encounters. He is an upstanding citizen and a productive member of the community. He has used his military experience in a positive way, and it has helped him focus on being a good community leader.

5. There is no indication the applicant 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 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

7. The Board should consider the applicant'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 his under other than honorable conditions discharge to a under honorable conditions (general) discharge. He contends he experienced mental health conditions as a result of a traumatic hand injury in 1994 that led to depression and anxiety and mitigates his misconduct. 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 04 June 1993; 2) The applicant's record was void of a charge sheet or separation packet containing the specific facts and circumstances surrounding the processing of his discharge; 3) The applicant asserted that his use of marijuana led to the circumstances that resulted in his discharge. However, no further information was provided or available for review; 4) The applicant was discharged on 20 November 1995, Chapter 14-12c(2) - misconduct. He completed 2 years, 5 months, and 17 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. A review of JLV did not produce any medical or mental health records. No additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the complete events which resulted in the

applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced mental health conditions while on active service, which mitigate his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition or experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After thorough review of the application, supporting documents, and the applicant's military record, the Board determined that relief was not warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization from "under conditions other than honorable" to "under honorable conditions (General)" and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests. In concurrence with the medical advisor's findings, the Board acknowledges the applicant's assertion that his misconduct was related to a hand injury resulting in depression and anxiety. Although the applicant's claims are noted, the absence of medical documentation during his time in service or after his discharge, and the lack of corroborating evidence, led the Board majority to conclude that his misconduct was not sufficiently mitigated by mental health conditions or other medical factors. The Board minority was convinced by the applicant's statement and granted relief to upgrade the applicant's characterization of service to under honorable conditions (General).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XX	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:XX	:XX	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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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, fraudulent entry, homosexuality, security reasons, and for the good of the service.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provide the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. In effect at the time, the regulation showed Soldiers separated under the provisions of AR 635-200, paragraph 14-12c, with a narrative reason of misconduct would receive SPD code "JKK."

4. Army Regulation 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. 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//