

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007779

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application of the Review of Discharge)

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 this was his first event of trouble, and he believes he did not have fair representation. He was told to accept the actions because it was the best thing he could receive. He did not receive counseling and did not understand the repercussions it would have. He was not aware he could request a change. He annotated post-traumatic stress disorder as an issue/condition related to his request.
3. The applicant enlisted in the Regular Army on 1 June 1977. He reenlisted in the Regular Army on 19 August 1980 and 28 January 1983; having continuous honorable service from 1 June 1977 to 27 January 1983.
4. The applicant served in Germany from 18 November 1977 to 10 October 1981 and from 18 April 1983 to 19 February 1986.
5. On 18 December 1985, court-martial charges were preferred on the applicant. The relevant DD Form 458 (Charge Sheet) shows violations of the Uniform Code of Military Justice (UCMJ) as follows:

- Specification, Charge I: on or about 18 November 1985, commit an assault on another Soldier by attempting to strike him with a motor vehicle, to wit: a passenger car, a means likely to produce death or grievous bodily harm upon the Soldier
- Specification, Charge II: on or about 18 November 1985, in the officers' club parking lot, operate a vehicle, to wit: a passenger car, while drunk
- Specification, Charge III: on or about 18 November 1985, willfully and recklessly damage by striking with a motor vehicle, a privately owned vehicle, the property of [REDACTED] the amount of said damage being in the sum of \$280.02

6. On 16 January 1985 [sic], the applicant consulted with legal counsel and voluntarily requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because of the charges which have been preferred against him under the UCMJ, each of which authorizes the imposition of a bad conduct or dishonorable discharge.

a. He acknowledged he was guilty of the charges against him or of a lesser included offense therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge. He stated that under no circumstances did he desire further rehabilitation for he had no desire to perform further military service.

b. He was advised of the nature of his rights under the UCMJ, the elements of the offenses with which he was charged, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at the time; and the maximum permissible punishment if found guilty.

c. He understood he may be discharged under other than honorable conditions. He was advised and understood the possible effects of an under other than honorable discharge and that as a result of such a discharge, he will be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Department of Veterans Affairs, and that he may be deprived of his rights and benefits as a veteran under both Federal and state law. He may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

7. On 28 January 1986, the separation authority approved the request for the good of the service submitted by the applicant and dismissed the charges and their specifications. He would be discharged under other than honorable conditions and issued a DD Form 794A (Under Other Than Honorable Conditions Discharge Certificate). He will be reduced to the grade of E-1.

8. On 20 February 1986, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 6 months, and 20 days of active service. He was awarded or authorized the Expert Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Hand Grenade Bar, Army Good Conduct Medal (2nd Award), Army Service Ribbon, Overseas Service Ribbon, Army of Occupation Medal, Army Achievement Medal. It also shows in:

- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): Chapter 10, Army Regulation 635-200
- item 26 (Separation Code): KFS
- item 27 (Reenlistment Code): RE-3, 3C
- item 28 (Narrative Reason for Separation): for the good of the service – in lieu of court-martial

9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. A Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. 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 1 June 1977; 2) On 18 December 1985, court-martial charges were preferred on the applicant for: A) an assault on another Soldier by attempting to strike him with a motor vehicle, likely to produce death or grievous bodily harm; B) operating a car while drunk; and C) willfully and recklessly damaging another car by striking with a motor vehicle; 3) On 20 February 1986, the applicant was discharged, Chapter 10 (for the good of the service – in lieu of court-martial). His character of service was under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

- c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.
- d. A review of JLV provided insufficient evidence the applicant has been diagnosed with service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition.
- e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health 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 misconduct? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition.
- (2) Did the condition exist or experience occur during military service? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.
- (3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant experienced PTSD while on active service. The applicant did drink excessively and drive a vehicle. Excessive drinking could be avoidant behavior and a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, there is no nexus between the applicant's potential PTSD and his misconduct damaging another car and assault on another Soldier by attempting to strike him with a motor vehicle in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's potential PTSD; 2) the applicant's potential PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone 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 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 an offense 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. 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 misconduct? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition.

(2) Did the condition exist or experience occur during military service? No, there is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant experienced PTSD while on active service. The applicant did drink excessively and drive a vehicle. Excessive drinking could be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, there is no nexus between the applicant's potential PTSD and his misconduct damaging another car and assault on another Soldier by attempting to strike him with a motor vehicle in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's potential PTSD; 2) the applicant's potential PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

The Board found insufficient evidence to warrant a discharge upgrade.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

5/5/2025



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. Paragraph 1-13a (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.
 - b. Paragraph 1-13b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) also known as Separation Codes, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty and the SPD code to be entered on the DD Form 214. The SPD code "KFS" was the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, by reason of in lieu of trial by court-martial. paragraph
4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) prescribes 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 nonwaivable 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, 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//