

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240007848

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to honorable
- amendment of his authority and reason for separation to Secretarial Authority vice Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10
- 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)
- Legal Brief in Support of Application
- Corrected Legal Brief in Support of Application
- Self-Authored Statement
- page 1 of DD Form 4 (Enlistment or Reenlistment Agreement – Armed Forces of the United States)
- Self-Authored Timeline of Trauma
- Excerpt of U.S. Army Criminal Investigation Command (CID) Letter to Congressional Representative, 11 January 1994
- page 1 of DA Form 2823 (Sworn Statement) from the Applicant, 5 May 1978
- Clinical Record – Consultation Sheet, 12 March 1978
- Excerpt of Memorandum, subject: Request for Discharge for the Good of the Service, 9 May 1978
- Memorandum, subject: Request for Discharge for the Good of the Service (Chain of Command Recommendations), 11 May 1978
- DD Form 214 (Report of Separation from Active Duty), 26 May 1978
- Medical Records (15 pages)
- Excerpt of CID Report of Investigation, 5 May 1978
- Letter from CID to Congressional Representative, 4 November 2003
- Newspaper Article, *Buffalo Veteran Speaks Out on* [REDACTED]
- Checklist for Screening Records

- Memorandum, re: Applicant, dated 11 March 2010 to the Army Board for Correction of Military Records (ABCMR) from Congressional Representative
- Memorandum, subject: Clarifying Guidance to Military Discharge Review Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, 25 August 2017
- Two Character Letters
- Facebook Messenger Correspondence

### 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 AR2003085944 on 12 August 2003.

2. The applicant states his chain of command and the CID agents abused their power and discretion while disciplining and discharging him. His records indicate multiple Uniform Code of Military Justice (UCMJ) violations among the chain of command, including false official statements, unlawful detention, conduct unbecoming an officer, and cruelty and maltreatment. The applicant's brother testified to the fact that the applicant was "chained like a slave and bent in a squat position" to a news outlet. The evidence also indicates the applicant was unlawfully detained by confinement at a military correctional facility on 12 April 1978 although there is no record of any charges pending against him during this period.

a. A detailed look into the CID interviews indicates harsh racism and threats to kill the applicant; however, no record of the chain of command attempting to alleviate the issues. The chain of command attempted to cover-up their consistent misconduct by forcing the applicant into separation through charges meant to place blame on the applicant and not themselves.

b. He was on an upward trajectory as a Soldier prior to his work with CID. He was verbally and physically attacked consistently after his unit members were made aware of his undercover activities. His actions led his leadership and peers to attack him and led to his eventual discharge.

c. It was a clear error by the command to have allowed the applicant to be charged with disrespect to a commissioned officer, disobeying a lawful command from his superior commissioned officer, and resisting being lawfully apprehended. He was in the midst of helping to apprehend true criminals within his unit and instead was charged with three violations of the UCMJ in retaliation for his efforts. The disobedience to lawful orders and disrespect the applicant showed toward his superiors was directly linked to the abuse he continued to face on a daily basis.

d. The applicant's conduct, actions post-service, and praise from his peers show he is a genuine asset to his community and country. This is a stark contrast to how his current discharge status characterizes him and his service.

3. The applicant provides:

a. A detailed trauma timeline, which summarizes incidents that occurred during his service.

b. An excerpt of a letter from CID, dated 11 January 1994, indicating the applicant agreed to work as an informant for the CID during March 1978 to August 1978.

c. Page 1 of the applicant's sworn statement, dated 5 May 1978, summarizing the details of the event on 4 May 1978 when he was approached by other Soldiers about being a "narc."

d. A self-authored statement indicating the applicant has post-traumatic stress disorder (PTSD) from his time in service as a direct result of the treatment he received from his commander and the other white Soldiers in his unit while working undercover for the CID.

e. A clinical record consultation sheet, dated 12 March 1978 and medical documents (15 pages), which will be discussed further by the Army Review Boards Agency's medical staff based on the applicant's contention of post-traumatic stress disorder (PTSD).

f. A letter from CID to the applicant's Congressional Representative, dated 4 November 2003, responding to questions posed by the representative in relation to the applicant's discharge upgrade request.

g. A newspaper article, *Buffalo Veteran Speaks Out on* [REDACTED] wherein the applicant was interviewed about his time serving under [REDACTED] and provided statement about working with CID about reporting narcotics activities among his unit when his commander instructed his battalion to attack him.

h. A letter to the ABCMR from the applicant's Congressional Representative, dated 11 March 2010, indicating there was new evidence not presented to the Board for consideration.

i. Two character letters from friends of the applicant attesting to his character as a kind and caring man and commitment to improving the underprivileged and advocating for better housing opportunities in the city.

j. Facebook messenger correspondence, reflective of messages to the applicant concerning community concerns.

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

a. He enlisted in the Regular Army on 4 May 1977.

b. He accepted nonjudicial punishment under the UCMJ for being posted as a sentinel and found sleeping upon his post. His punishment consisted of reduction to private (PVT)/E-1, forfeiture of \$92.00, and extra duty for 14 days.

c. His record contains a Military Police Report, with an offense date of 21 April 1978, wherein the applicant was the subject of a complaint for wrongful possession and use of marijuana and wrongful possession of drugs. The investigation revealed the applicant did wrongfully possess and use an undetermined amount of marijuana by smoking and possessed .19 grams of marijuana.

d. His record contains a CID Report of Investigation, with an incident reported 5 May 1978, wherein the applicant reported two Soldiers threatened to kill the applicant by shooting him or cutting him with a razor blade and other communicated a threat.

e. Court-martial charges were preferred on the applicant; however, the relevant DD Form 458 (Charge Sheet) is unavailable for the Board to review.

f. On 9 May 1978, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.

(1) He understood he may request discharge for the good of the service because of the following charges which have been preferred against him under the UCMJ, each of which authorizes the disposition of a bad conduct or dishonorable discharge:

- Violation of Article 89: disrespect to a superior commissioned officer
- Violation of Article 90: disobeying a lawful command from his superior commissioned officer
- Violation of Article 95: resisting being unlawfully apprehended

(2) He was making the request of his own free will and had not been subjected to any coercion whatsoever by any person. He had been advised of the implications that are attached to it. By submitting the request for discharge, he acknowledged that 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.

(3) He was advised of the nature of his rights under the UCMJ, the elements of the offenses which he was charged, any relevant lesser included offenses, 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 to him; and the maximum permissible punishment if found guilty.

(4) He understood if his request for discharge was accepted, he may be discharged under conditions other than honorable. He was advised and understood the possible effects of an under other than honorable discharge and that as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the VA, and that he may be deprived of his rights and benefits as a veteran under both Federal and state law. He also understood he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

g. On 18 May 1978, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of Army Regulation 635-200, Chapter 10. He would be furnished an Under Other Than Honorable Conditions Discharge Certificate (DD Form 794A) and reduced to the lowest enlisted grade.

h. On 26 May 1978, he was discharged accordingly. His DD Form 214 shows he completed 1 year and 23 days of active service. It also shows in:

- item 9c (Authority and Reason): Chapter 10, Army Regulation 635-200, separation program designator (SPD) JFS
- item 9e (Character of Service): under other than honorable conditions
- item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): Expert Marksmanship Qualification Badge with Rifle Bar (M-16) and Parachute Badge

5. 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.

6. 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.

## 7. 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 honorable, and a change of the narrative reason for separation to "Secretarial Authority." He contends he experienced an undiagnosed mental health condition, PTSD, racial discrimination and physical abuse 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 4 May 1977.
- There was an absence of an ROP for applicant which included the lack of circumstances and facts regarding applicant's separation proceedings. The DD Form 458 (Charge Sheet) was not available for review by the Board as well.
- The applicant had court-martial charges preferred against him for violations of the Uniform Code of Military Justice. The applicant had committed violations of Articles 89, 90, and 95 by disrespecting a commissioned officer, disobeying a command and resisting lawful apprehension (per Request for Discharge for the Good of the Service, dated 9 May 1978).
- A final CID report (5 May 1978) determined that four soldiers threatened deadly harm to applicant and another soldier.
- Applicant voluntarily requested a discharge for the good of the service on 9 May 1978 which was approved by his commander.
- The applicant was discharged on 26 May 1978 and was credited with 1 year, 0 months and 23 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was physically assaulted, threatened with deadly force, bullied and emotionally abused. The applicant did submit medical and mental health documentation with his application. The application contained numerous pages of DOD treatment notes which in large part are elucidated in the JLV section, A medical consult form in 2008 indicated that PTSD was likely the case and that he was referred to psychiatry. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed a history of mental health related treatment or diagnoses. The first outpatient BH entry was a Compensation and Pension Examination (31 Oct 2017) that confirmed diagnoses for PTSD, Persistent depressive disorder, Alcohol use disorder and Cannabis use disorder. He reported racist treatment, threats, assaults and fears of being killed by officers during his time in service. The psychologist indicated he met the criteria for PTSD due

to military trauma. On 2 Apr 2018, applicant noted he agreed to work undercover as a narc for CID, and that once this became known in his unit, beatings and threats to kill him escalated. The treatment plan was for the provider to actively work with him for Care Management. He was seen on 19 Apr 2018 at the ER for back pain and PTSD symptoms. On 10 Jul 2018, a PTSD Program intake indicated testing results demonstrated applicant continued to meet the criteria for a PTSD diagnosis. He reported prior confrontation with his commander culminated by him striking the captain and fleeing the scene. He claimed the lieutenant instructed the first sergeant to shoot him on sight. He reportedly was subsequently placed in confinement and beaten. On 28 Aug 2018, applicant expressed anger and distress to his BH provider when he found out his claim was denied for a discharge upgrade. This resulted in a brief period of heavy alcohol consumption. Other than a brief interaction in Sep 2019, the next BH entry occurred four years later on 18 Aug 2023 wherein he reported increased stress due to worsening of his PTSD and anxiety. He conveyed he had been awarded zero percent for PTSD in 2017, and an ongoing uncertainty whether he could be treated for PTSD with VA. Applicant had nine more BH outpatient encounters in 2024. His last available in-person entry (21 Nov 2024) noted increased anxiety. He was agreeable to a warm handoff to a Peer Specialist as applicant showed an interest for ongoing behavioral health services.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is adequate evidence to support that the applicant had a condition or experience (PTSD) that potentially mitigates or partially mitigates his misconduct. However, there is sparse military separation documentation indicating the nature of the misconduct that led to an under other than honorable conditions discharge. This in effect prevents an accurate assessment regarding the actual misconduct that occurred and consequently whether it can be mitigated.

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, PTSD, at the time of the misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is evidence in the VA records that the applicant experienced PTSD during his time in service, as well as hostile, threatening behavior from other soldiers in his unit per CID report. However, there is very limited separation documentation to provide an accurate account of the facts and circumstances of the misconduct which led to his

discharge. That said, the applicant contends he was experiencing a behavioral health condition or an experience that mitigated his misconduct, supported in part by VA documentation, and per Liberal Consideration his contention by itself 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. Upon review of the applicant's petition, available military records, and the medical advisory opinion, the Board carefully considered the recommendation of the Agency Behavioral Health Advisor, which concluded that there was adequate evidence to support that the applicant had a condition or experience specifically post-traumatic stress disorder (PTSD)—that potentially mitigates or partially mitigates his misconduct.

2. The Board acknowledged the presence of PTSD symptoms during the applicant's period of service, it found that the available evidence does not establish a sufficient nexus between the condition and the misconduct that led to his discharge. The Board noted that the military separation documentation is sparse and lacks a detailed account of the circumstances surrounding the applicant's misconduct. However, the record does reflect prior nonjudicial punishment and a substantiated Military Police report involving drug-related offenses, which are serious violations of military law and discipline.

2. Consideration was given to the Kurta Questions:

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discharge. That said, the applicant contends he was experiencing a behavioral health condition or an experience that mitigated his misconduct, supported in part by VA documentation, and per Liberal Consideration his contention by itself is sufficient for the board’s consideration.

3. The Board did not find that the condition actually excused or sufficiently mitigated the specific misconduct that resulted in the applicant’s discharge. The applicant voluntarily requested separation under Chapter 10, Army Regulation 635-200, acknowledging guilt to charges that included disrespect to a commissioned officer, disobeying a lawful command, and resisting apprehension. Furthermore, the Board recognized the applicant’s post-service achievements and community contributions, it determined that these factors, though commendable, do not outweigh the seriousness of the misconduct or justify clemency. The Board found the discharge under other than honorable conditions was both proper and equitable, and that the authority and reason for separation were appropriate and supported by the record. Therefore, the Board found no basis for reversal of the previous Board determination to grant relief, and the request for upgrade of discharge and amendment of the separation authority and narrative reason is denied.

4. 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:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number R2003085944 on 12 August 2003.

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. 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.

2. 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 "JFS" 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

3. 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

4. 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.

5. 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//