

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240007856

APPLICANT REQUESTS:

- in effect, honorable physical disability discharge in lieu of general discharge under honorable conditions due to alcohol abuse-rehabilitation failure
- unspecified amendment to time lost
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 27 May 1983
- Department of the Army, Office of the Deputy Chief of Staff for Personnel memorandum, undated

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's complete military service record is not available for the Board to review. His service records were requested from the National Personnel Records Center (NPRC), but unfortunately, they were checked out and unavailable. His case is being considered using the available evidence provided by the applicant.
3. The applicant states:
  - a. His reason for discharge is a false positive urinalysis test. His character of service should be upgraded to honorable from honorable conditions. Reference to discharge under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) chapter 9 due to alcohol abuse, rehabilitation failure should be removed from his record. His

DD Form 214 also shows time lost "None," which is incorrect.

b. He seeks relief for the 1 year and 4 months of active duty he would have served, plus the 3 years of Reserve duty which was part of his initial enlistment terms. He had planned to do another 14 years of service after that and retire with 20 years of active-duty service, which was taken from him.

c. The Army did not personally contact him to inform him that his urinalysis test revealed it did not meet all scientific or legal requirements for use in disciplinary or administrative actions that resulted in his chapter 9 discharge. The Army failed to personally inform him that he could return to active duty and that he could resume his military career.

d. His character was unjustly assaulted and diminished by inconclusive drug testing. His discharge was humiliating, disgraceful, and demeaning. He has lived with anxiety, depression, trust issues, and mental stress for years as a result.

e. He wasn't given the information by the Post Office in order to respond in a timely fashion. Four years after his discharge he received the envelope. Out of disgust with the Army and its treatment of him, he did not open it but put it in a drawer. In his mind, he was discharged illegally. It was 2000 when he ran across the letter and opened it. The letter the Army sent him admits there was not sufficient evidence for disciplinary or administrative action. His inconclusive urinalysis test was the sole reason he was discharged.

f. He has marked the boxes indicating that post-traumatic stress disorder (PTSD) and other mental health are conditions related to his request and has marked the category boxes indicating that administrative correction pay, and allowances, disability, and discharge/separation all apply to his application.

4. The applicant's DD Form 214 shows he enlisted in the Regular Army on 18 June 1981 and was awarded the Military Occupational Specialty (MOS) 63W (Wheel Vehicle Repairer).

5. The complete facts and circumstances surrounding the applicant's discharge are unknown, as his discharge packet, to include any possible urinalysis results, Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) enrollment and failure documentation, notification of separation, acknowledgment of separation, and any relevant medical documents pertaining to his mental health conditions are not in his available records for review.

6. The applicant's DD Form 214 further shows:

a. He was given a general discharge under honorable conditions on 27 May 1983, under the provisions of Army Regulation 635-200, chapter 9, due to alcohol abuse-rehabilitation failure with corresponding Separation Code JPD and a reentry code of 3.

b. He was credited with 1 year, 11 months, and 10 days of net active service with no time lost.

7. There is no evidence of record the applicant was ever in an absent without leave (AWOL) duty status, incarcerated, or otherwise accrued periods of lost time during his enlistment.

8. The applicant provided a partial, unsigned and undated, memorandum from the Department of the Army, Office of the Deputy Chief of Staff for Personnel memorandum, Subject: Correction of Military Records, Positive Urinalysis Tests during the Period 27 April 1982 – 31 October 1983, with addressees unlisted. It shows:

a. In September 1983, the Department of the Army became concerned that selected urinalysis test results from the Fort Mede drug testing laboratory were not meeting legal and scientific standards for use in disciplinary and administrative actions.

b. On 24 October 1983, The Surgeon General of the Army directed that a panel of civilian and military chemists and lawyers review the operations and procedures of all Army and Air Force drug testing laboratories. As part of this inquiry, the panel was charged to review a representative number of previously reported urinalysis test results from each laboratory to determine if these results were scientifically and legally supportable.

c. The panel rendered a report on 12 December 1983. The report concluded that the testing procedures used by all laboratories were adequate to identify drug abuse and found no significant evidence of false positive urinalysis reports. However, the panel also found that a percentage of previously reported positive urinalysis results were not scientifically or legally supportable for use in disciplinary or administrative actions.

d. Based on the panel's findings that a number of previously reported positive urinalysis test results were not scientifically or legally supportable, a team of chemists and attorneys have reviewed all available records of positive urinalysis test reported from 17 April 1982 through 31 October 1983, by each Army drug testing laboratory.

e. The review of your positive urinalysis test reveals it did not meet all scientific or legal requirements for use in disciplinary or administrative actions. If you believe that any action taken against you was based upon this positive urinalysis test, you may

petition the ABCMR to seek a correction of any error or injustice that you believe may have occurred.

9. On 21 January 2025, the Army Review Boards Agency requested the applicant provide a copy of the medical documents that support this issue of PTSD and other mental health conditions, in order to consider his application, but he did not respond.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability discharge in lieu of his general discharge under honorable conditions due to alcohol abuse-rehabilitation failure. He contends he experienced mental health conditions including PTSD that mitigates his 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's complete military service record is not available for the Board to review. His service records were requested from the National Personnel Records Center (NPRC), but unfortunately, they were checked out and unavailable. His case is being considered using the available evidence provided by the applicant; 2) The applicant's DD Form 214 shows he enlisted in the Regular Army on 18 June 1981; 3) The applicant was given a general discharge under honorable conditions on 27 May 1983, Chapter 9, due to alcohol abuse-rehabilitation failure.

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

c. The applicant asserts he experienced mental health conditions including PTSD that mitigate his discharge while on active service. There is insufficient evidence the applicant was found to be experiencing a mental health condition at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile.

d. A review of JLV provided insufficient evidence the applicant has engaged with the VA for behavioral health treatment for a service-connected mental health condition including PTSD. He also does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant was found to be experiencing a mental health condition including PTSD at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permanent

psychiatric profile. Also, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation of his discharge as the result of his 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 found to be experiencing a mental health condition including PTSD at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. Also, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his discharge. The applicant's contention 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 experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the absence of a separation packet and the reason for his separation. The Board considered the review and conclusions of the medical advising official. The Board concurred with the advising official finding insufficient evidence the applicant was found to be experiencing a mental health condition including PTSD at the time of his active service that would not meet medical retention standards, attended more than six months of treatment without improvement, required inpatient psychiatric care, or was ever placed on a permanent psychiatric profile. The Board also found there is insufficient evidence that the applicant had an unfitting condition at the time of service that would warrant referral of the applicant's records to the disability evaluation process. The Board also found insufficient evidence surrounding the events which resulted in the applicant's discharge to determine possible mitigation as the result of a mental health condition or experience. The applicant did not provide evidence of post-service

accomplishments or recommendations in support of a clemency determination by the Board. Based on a preponderance of evidence, the Board determined that the applicant's separation was not in error or unjust and that there is insufficient evidence to support an upgrade as a matter of liberal consideration.

3. 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
XX:	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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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.
3. 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 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 grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of 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. 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.
4. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency

is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

6. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. Army Regulation 635-200 (Personnel Separations, Enlisted Personnel), in effect at the time, sets for the basic authority for the separation of enlisted personnel.

a. Chapter 9 (Alcohol or Other Drug Abuse (Exemption Policy) provides the authority and outlines the procedures for discharging enlisted personnel without right to

board action based on alcohol or other drug abuse (i.e. the illegal, wrongful, or improper use of any controlled substance, alcohol or drug(s) when:

(1) The member is entitled to exemption under this policy as expressed in columns B and C, Table 6-1, Army Regulation 600-85 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP)); and

(2) The member has been determined to be an alcohol or other drug rehabilitation failure in accordance with Army Regulation 600-85.

(3) Note: offenses of alcohol or other drug abuse which are not exempt may properly be the basis for discharge proceedings under chapter 14 for misconduct; however, the evidentiary aspect of the exemption policy in Army Regulation 600-85 is applicable.

b. The immediate commander will prepare a letter to the discharge authority including:

(1) Commander's statement declaring member a rehabilitation failure and documentation thereof.

(2) A chronological history of the member's alcohol or other drug abuse.

(3) Circumstances (to include dates) concerning member's referral, clinical evaluation/diagnosis, and enrollment in the ADAPCP.

(4) A summary of the rehabilitation efforts made before and after the member was enrolled in the ADAPCP.

c. Separation action will not be initiated until the member has been enrolled in the ADAPCP for a minimum of 30 days and the commander, in consultation with the rehabilitation team, determines that further rehabilitation efforts are not practical.

d. Members discharged under this chapter will have their service characterized as honorable or under honorable conditions and an honorable or general discharge certificate will be furnished.

e. If the documentation in the file satisfies the discharge authority that required rehabilitative efforts have been made, that further rehabilitative efforts are not practical, and that the member's potential for full, effective service is substantially reduced by alcohol or other drug abuse, he will approve the separation.

8. Title 10, U.S. Code, section 1556 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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//