

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240007901

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- amendment of his separation code
- amendment of his narrative reason for separation

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 31 October 1992
- DD Form 214, for the period ending 4 August 1994
- [REDACTED] Permanent Student Record
- Two Self-Authored Statements
- Department of Veterans Affairs (VA) Medical Records (30 pages)
- Medical Record – Consultation Sheet, 21 July 1994
- Six Character Letters

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 he proudly followed in the footsteps of his family, deeply rooted in military service. He began his journey with pride; however, his aspirations as a Soldier and boxer were met with unforeseen adversity as his leadership felt there was no place for boxers and that led to him being targeted. He continued his boxing career, yet believed his military career was under threat. These events took a toll on his health, leading to an untreated traumatic brain injury (TBI) that impaired his cognitive abilities. The lack of support from his chain of command left him without a clear path for help.

a. He believes the charges against him were unjust and not reflective of the true events. The accusation of credit card theft stemmed from a misunderstanding, the cards were taken from a wallet he found with no intention of use. The allegations of being absent without leave must consider his mental state at the time as he was seeking help for his TBI and was not in a rational state of mind. The discovery of hash in his lock was a situation beyond his knowledge and control, suggested it was planted. The charge of storing a non-operational vehicle, which he had already sold, seems disproportionate compared to other offenses that did not result in court-martial.

b. He has always had the intention to serve with honor and pursue his passion for boxing. The challenges he faces, including an untreated TBI and subsequent hardships have significantly impacted his life and service.

3. The applicant provides:

a. His VA medical records (30 pages), which summarize his appointments, medical history, problem list, admissions/discharges, notes, and past medical history. Additionally, he provides a medical record consultation sheet, dated 21 July 1994. Based on the applicant's contention of TBI, these documents will be reviewed by the Army Review Boards Agency's medical staff.

b. His [REDACTED] Permanent Student Record, dated 13 March 1992, which shows his grade summary.

c. Six character letters from his mother, the mayor, two friends, a sibling, and a co-worker that summarize the applicant's character as loyal, selfless, and a contributing member of his church and community.

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

a. The applicant's record contains a DD Form 4 (Enlistment/Reenlistment Document), dated 30 March 1992, which indicates he enlisted in the Regular Army on 30 March 1992.

b. The applicant's record also contains and the applicant provides a DD Form 214 for the period 30 April 1992 to 31 October 1992 reflective of his honorably relief from ADT for completion of military occupational specialty (MOS) training in MOS 44B (Metalworker). The DD Form 214 is authenticated by the applicant and a certifying official.

c. The applicant enlisted in the Regular Army on 30 April 1992.

d. Court-martial charges were preferred on the applicant; however, the relevant DD Form 458 (Charge Sheet) is unavailable for the Board's review. However, the applicant provides some context of his charges in his self-authored statement summarized in paragraph 2a above.

e. On 22 June 1994, the applicant consulted with legal counsel and submitted a request for discharge in lieu of court-martial. He voluntarily requested discharge in lieu of trial by court-martial under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) based on the following charges which have been preferred against him under the Uniform Code of Military Justice (UCMJ), which authorizes the imposition of a bad conduct or dishonorable discharge: Articles 86 (AWOL), 92 (Violating a Lawful General Order and/or Regulation), 121 (Larceny and Wrongful Appropriation), and 134 (Conduct Prejudicial to Good Order and Discipline).

(1) He was making the request of his own free will and was not subjected to any coercion whatsoever by any person. He had been advised of the implications that are attached to it. He acknowledged that he understood the elements of the offenses charged and is guilty of at least one 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.

(2) 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.

(3) 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.

f. On 8 July 1994, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200, Chapter 10. The applicant would be separated from the service under other than honorable conditions and reduced to the grade of private/E-1.

g. On 4 August 1994, he was discharged accordingly. His DD Form 214 shows he completed 2 years, 3 months, and 5 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon, and Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): Army Regulation 635-200, Chapter 10
- item 26 (Separation Code): KFS
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): in lieu of trial by court-martial

h. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his characterization and/or reason of his discharge. On 27 August 2004, the applicant was notified his request was denied based on the applicant being properly and equitably discharged.

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. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge and other corresponding changes to his DD-214. He contends he experienced posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI) that 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 30 April 1992; 2) Court-martial charges were preferred on the applicant. However, the relevant Charge Sheet is unavailable for the Board's review. The applicant provided a statement that he was charged with theft, AWOL, the possession of hash, and storage of a non-operational vehicle; 3) On 22 June 1994, the applicant consulted with legal counsel and submitted a request for discharge in lieu of court-martial based on the following charges: Articles 86 (AWOL), 92 (Violating a Lawful General Order and/or Regulation), 121 (Larceny and Wrongful Appropriation), and 134 (Conduct Prejudicial to Good Order and Discipline); 4) The applicant was discharged on 04 August 1994, Chapter 10- In lieu of trial by court-

martial. His character of service was under other than honorable conditions. He completed 2 years, 3 months, and 5 days net active service.

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) and VA and military medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he experienced PTSD and TBI that mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a TBI or mental health condition including PTSD while on active service. The applicant provided military medical documentation from 21 January 1994 where a military Internal Medicine provider diagnosed him with chronic insomnia. There was evidence in the same encounter the applicant reported being a boxer, but there is insufficient evidence he was diagnosed or treated for a TBI during active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected TBI or a mental health condition including PTSD. However, he sought care at the VA initially for assistance with homelessness starting on 26 August 2023 and for suicidal ideation on 25 January 2024. The applicant also provided medical documentation that he has been diagnosed with PTSD during his VA mental health intake on 26 February 2024. During his intake with the VA, he also reported a history of incarceration for drug charges and robbery following his time in service.

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 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? Yes, the applicant asserts he experienced a TBI and PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and PTSD while on active service. The applicant reported that he was a boxer during his time in service that contributed to his experience of these conditions.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with a service-connected TBI or PTSD. While the complete Charge Sheet is unavailable to provide a complete opine, there is evidence the applicant was charged with going

AWOL. Avoidant behavior such as going AWOL can be a natural sequalae to PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the applicant's reported PTSD and TBI and the applicant's charge of larceny in that: 1) this type of misconduct is not a part of the natural history or sequelae of PTSD or TBI and; 2) PTSD and TBI broadly do not affect one's ability to distinguish right from wrong and act in accordance with the right. Yet, the applicant contends he experienced a mental health condition or experience while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the medical review failed to find any mitigation for the misconduct leading to the applicant's separation, based upon the the post-service character evidence and letters of support provided, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions. However, the Board failed to find any justification for changing the separation code and/or narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

GRANT FULL RELIEF

GRANT PARTIAL RELIEF

GRANT FORMAL HEARING

DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined 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 to changing the separation code and/or narrative reason for separation.

6/7/2025

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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//