

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240007925

APPLICANT REQUESTS:

- Reconsideration of his previous request to upgrade his undesirable discharge to honorable
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement
- Command Sergeant Major's Certificate of Merit, 14 March 1974
- Columbus Technical College Diplomas, 18 March and 6 June 2008
- Columbus Technical College Certificate, 16 September 2009
- Previous Army Board for Correction of Military Records Docket Number AR1999024047, 12 August 1999
- Character reference letters
- Medical records

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 AR1999024047 on 12 August 1999.

2. The applicant states, in part:

a. He requests his Under Conditions Other Than Honorable be made Honorable and a personal appearance before the Board. He is requesting an upgrade of his military discharge because he has learned from his mistakes he made during his service. He takes full responsibility for the errors and bad choices he made during his time in service. He made bad life choices using drugs and associating with others who took advantage of him. Since his discharge he has been treated for his drug addiction by civilian drug rehabilitation and Veterans Administration (VA). He has been drug-free for 26 years. He is now a member of Narcotics Anonymous and serves the community

by speaking to youth about the road he chose and went down during his youth as a drug abuser and its effects on his life and military service.

b. He speaks at churches, schools, and other venues in the community such as hospitals, prisons, and institutions. He went to trade school and completed a couple of trades and got a diploma in technology. He got more involved in two church ministries dealing with the Boys to Men program. Mentoring young men, getting involved in the outreach ministry in the neighborhood, helping the homeless, and those who are less fortunate. He serves as a deacon, elder, usher and helps maintain the grounds of one of the church's. Conversely, he was not offered or given counseling or help with his drug or mental problems while on active duty in the Army. He was discharged without any help or counseling.

c. He comes from a military family where his father served for 27 years, his cousin was a chief warrant officer for over 25 years and another cousin served for 20 years. He joined the Army to proudly serve his country with just as much love and passion as his father did. Unfortunately, while he was in Korea he encountered some things in the field that bothered him even to this day. His aunt who was like a mother to him was dying, during this time he made some bad choices in friends of older men who introduced him to marijuana and then other drugs saying that this will make him feel better. His aunt died and after he got back from her funeral, things got worse in his military career and his addiction. He made more bad choices using different drugs to medicate his problem which caused him and his family a lot of pain and suffering to include him being jailed and almost death. By God's grace, people who still believed and loved him in spite of his past introduced him to Narcotics Anonymous and he has been clean for 26 years.

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

a. He enlisted in the Regular Army on 8 November 1973. At the time of his enlistment, he admitted to certain law violations, speeding, no state driver's license, improper vehicle lights, and again, no state driver's license. The applicant completed training requirements and was awarded his military occupational specialty.

b. On 4 February 1974, the applicant's commanding officer notified him that he was initiating action to eliminate him from the service for fraudulent entry for concealment of civil convictions — possession of illegal firearm, burglary, grand theft auto, assault, reckless driving, and driving without a license. The applicant requested consideration of his case before a board of officers. The results of that board are unknown. However, on 8 March 1974, the convening authority approved the applicant be retained in the service.

c. In May 1974, he was assigned to his unit in Korea as an Armor Crewman.

d. On 23 August 1974, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for violating a lawful general regulation by not having in his possession a valid Liberty Pass while off the limits of Camp Casey, Korea. His punishment consisted of forfeiture of seven days pay (\$85.00) and 14 days restriction and extra duty. He did not appeal.

e. A Military Police Report and investigator's statement indicates the applicant assaulted another Soldier on 22 February 1975.

f. On 23 February 1975, the applicant's commanding officer ordered the applicant into arrest, which included restriction to his quarters, and a statement by the Charge of Quarters (CQ) indicates the applicant was missing from his unit.

g. On 28 February 1975, a Sworn Statement indicates the applicant's commanding officer formally read the applicant court-martial charges, and at that time lifted his arrest to quarters; however, informed him that he was restricted to his billet, place of worship, latrine and mess hall during off duty hours.

h. On or about 3 March 1975, the Unit CQ provided a statement and said the applicant was not in his unit.

i. His record also contains a statement which shows an officer checked on the applicant during the evening of 7 March 1975 and the applicant was not in his quarters.

j. DA Forms 4187 (Personnel Action) show on:

- 14 March 1975, the applicant was placed in pre-trial confinement
- 19 March 1975, he escaped custody of Military Police, Camp Casey, Korea and his duty status was changed to absent without leave (AWOL) and subsequently dropped from the rolls
- 4 April 1975, the applicant was apprehended by military authorities

k. On 23 April 1975, the applicant submitted a statement in support of his voluntary request to be discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, and stated:

(1) He refused to get a haircut and was told that he was off the boxing team. He received a letter that his aunt had died, got drunk, and missed an alert for which he received nonjudicial punishment. He received a rehabilitative transfer to another company. He continued by outlining his problems with the noncommissioned officers (NCO) in his unit and stated he wanted a transfer but it was refused. He stated he received NJP on three more occasions, two for missing formations, and one for refusing

to get a haircut. He stated that he had problems with the personnel in his unit because he was on the boxing team.

(2) He related an incident about a struggle between two sergeants, stating that he was the victim, however, his commander placed him under company arrest. He related problems with his commanding officer, failure to salute, implying that he was being harassed. He said he went AWOL because he felt that he had been pushed to the extreme. He returned to his unit on 14 April 1975. He went into his commander's office, and he started reading him the charges. He was searched prior to going inside the "stockage liaison va" [?] and the NCO removed what was suspected to be marijuana from the cigarette pack, which the applicant said was planted on him. He stated he felt his resignation from the Army would be in the best interests of all concerned.

l. On 8 May 1975, the separation authority approved the applicant's request for discharge for the good of the service, and directed he be furnished an Undesirable Discharge Certificate and reduced to the lowest enlisted grade.

m. DA Forms 4187 show the applicant went AWOL again on 14 May 1975 and was dropped from the rolls of the unit on 13 June 1975.

n. On 5 November 1975, a 2nd Infantry Division Message indicates the applicant was returned to military control on 7 July 1975 and returned to Korea.

o. On 8 December 1975, medical documents show the applicant was operated on at Letterman Army Medical Center, Presidio of San Francisco, to remove needles in his right forearm and left wrist. A clinical record cover sheet dated 18 December 1975 from Letterman Army Medical Center, Presidio of San Francisco, indicates the applicant was diagnosed with improper use of heroin, LSD (lysergic acid diethylamide), cocaine, and barbiturates.

p. A Clinical Record dated 22 December 1975, indicates the applicant was admitted to the hospital on 1 December 1975 for needles in both forearms and was discharged from the hospital on 16 December 1975. He broke off needles in his arms in October 1975 while on a hunger strike in the stockade in Korea. Both needles were removed without difficulty in the operation on 8 December 1975.

q. On 15 January 1976, the applicant was discharged from the Army under the provisions of AR 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial. He completed 1 year, 9 months, and 17 days of service, with 142 days of lost time. He did not receive a personal award. His DD Form 214 (Report of Separation from Active Duty) shows in:

- item 6a (Grade, Rate or Rank) – PV1(E-1)

- item 9e (Character of Service) – Under Conditions Other Than Honorable
- item 9f (Type of Certificate Issued) – DD Form 258A (Undesirable Discharge Certificate)

r. On 12 August 1999, the Board voted unanimously to concur with the determination that the application submitted by the applicant was not submitted within the time required. The applicant had not presented, and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

4. In support of his petition to the Board, the applicant provides:

a. Command Sergeant Major's Certificate of Merit dated 14 March 1974, which shows he received the certificate for his faithful and loyal service during the period of 17 January through 14 March 1974.

b. Columbus Technical College Diploma dated 18 March 2008, showing he was awarded a diploma for Major Appliance Technology.

c. Columbus Technical College Degree dated 6 June 2008, showing he was awarded an Associate of Applied Science Degree in Technical Studies.

c. Columbus Technical College Certificate dated 16 September 2009, showing he was awarded a certificate in Air Conditioning Technician Assistant.

d. Multiple character reference letters submitted by family members, friends, church members, police commander, and associates attesting to the applicants growth, community service, mentorship, volunteerism, integrity, honesty, and high moral character.

e. Medical records which show, in pertinent part, his medical history, examinations, treatment, diagnosis, and prognosis. The entire medical record will be reviewed by the Army Review Boards Agency medical staff.

5. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published Department of Defense guidance on equity, injustice, or clemency.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced other mental health conditions that mitigate 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 8 November 1973; 2) On 23 August 1974, the applicant accepted nonjudicial punishment (NJP) for not having in his possession a valid Liberty Pass; 3) Military Police Report and investigator's statement indicates the applicant assaulted another Soldier on 22 February 1975. On 28 February 1975, the applicant's commanding officer formally read the applicant's court-martial charges, and at that time limited his arrest to quarters. On 07 March 1975, there is evidence the applicant was not in his quarters; 4) On 14 March 1975, the applicant was placed in pre-trial confinement. On 19 March 1975, he escaped custody of the Military Police and placed on AWOL status. He was apprehended by military authorities on 04 April 1975; 5) The applicant was again found AWOL from 14 May-7 July 1975; 6) On 15 January 1976, the applicant was discharged, Chapter 10, for the good of the service in lieu of trial by court-martial. His service was characterized as under other than honorable conditions. He completed 1 year, 9 months, and 17 days of service, with 142 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military and medical service records. The VA's Joint Legacy Viewer (JLV) and VA and hardcopy medical documentation provided by the applicant were also reviewed.

c. The applicant asserts he experienced other mental health issues that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service. As documented in his medical service documentation as well as sworn statements by the applicant; the applicant displayed an extensive history of multiple drug use including but not limited to heroin, LSD, cocaine, alcohol, and barbiturates. This was documented throughout his time in service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed by the VA with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition. The applicant provided hardcopy civilian medical documentation of continued substance abuse treatment following his discharge from military service including repeated inpatient treatment, referrals to 28-day programs, detoxification, relapses, and documented overdoses. This included but not limited to 3 separate overdose-related hospitalizations within the month of June 1986. This continued in documentation provided from 1995, where the applicant was diagnosed with polysubstance abuse, adult antisocial behavior, attempted malingering, and personality disorder NOS. The applicant initiated ongoing outpatient therapeutic and psychiatric treatment beginning 06 September 2007 until his final documented session on 19 October 2015. During this time period, he held the diagnoses of major depressive disorder, recurrent, mild and generalized anxiety

disorder and reported that he experienced auditory hallucinations. On 23 February 2024, he restarted psychological and psychiatric services and was diagnosed with delusions, hallucinations, paranoia, major depressive disorder with psychotic features, and anxiety. In addition, during the subsequent encounters, he began to report previously undisclosed violent potentially traumatic events that applicant reported occurred during his military service, which were inconsistent with his service record. In later sessions, he also was diagnosed with PTSD as a result of his description of events during his active service and his resulting symptoms.

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 mitigate 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 other mental health conditions, which mitigate his misconduct. Beginning in September 2007, he was diagnosed and treated for the diagnoses of major depressive disorder, recurrent, mild and generalized anxiety disorder in addition to experiencing auditory hallucinations. However, none of these diagnoses were connected by his treating providers to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced other mental health conditions while on active service.

(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 mental health condition. The applicant did engage in avoidant or erratic misconduct such as not following orders, drug use, and going AWOL, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. The applicant also engaged in the misconduct of assault and escaping from authorities. There is no nexus between this type of misconduct and the applicant's reported mental health conditions in that: 1) These types of misconduct are not a part of the natural history or sequelae of the applicant's reported mental health conditions; 2) The applicant's reported mental health conditions 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:

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, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced other mental health conditions, which mitigate his misconduct. Beginning in September 2007, he was diagnosed and treated for the diagnoses of major depressive disorder, recurrent, mild and generalized anxiety disorder in addition to experiencing auditory hallucinations. However, none of these diagnoses were connected by his treating providers to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced other mental health conditions while on active service.

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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:

| <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 amendment of the ABCMR decision rendered in Docket Number AR1999024047 on 12 August 1999.


X //SIGNED//

CHAIRPERSON
Signed by:

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 (AR) 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. In pertinent part, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. AR 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, sets forth the basic authority for the separation of enlisted personnel. In pertinent part:
 - a. Chapter 10 of that regulation provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial and must have included the individual's admission of guilt. An undesirable discharge certificate will normally be furnished an individual who is discharged for the good of the Service.
 - b. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current entitlement of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.
 - c. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.
 - d. An undesirable discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons.
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.
 - a. 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.

b. 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 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.

//NOTHING FOLLOWS//