

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007943

APPLICANT REQUESTS: an amendment of his narrative reason for separation to hardship.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 his father passed away and he went home for the funeral. His mother and family were struggling. His brother started to use drugs and was not reliable. This brought a lot of stress for him and his mother. He had to figure out how to pay the bills. He made the difficult decision to get a job and take care of his family instead of returning to the Army. He did not even have time to mourn himself which caused future problems. The decision not to return to the Army caused mental health issues that have not been dealt with. He is seeking a change in discharge so he can access health services. The applicant annotates other mental health as a condition and/or issue related to his request.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 12 January 1995. After the completion of training, he was assigned to Fort Drum, NY.
  - b. On 13 July 1996, court-martial charges were preferred against the applicant for violating the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows on or about 2 November 1995, the applicant, without authority, absented himself from his organization located at Fort Drum, NY, and did remain so absent until on or about 10 July 1996.

c. On 18 July 1996, the applicant consulted with legal counsel and voluntarily requested discharge in lieu of trial by courts-martial under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He understood he may request discharge in lieu of trial by court-martial because of the charge preferred against him under the Uniform Code of Military Justice, each of which authorizes the imposition of a bad conduct or dishonorable discharge.

(1) He acknowledged he understood the elements of the offense charged and was guilty of the charge 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 understood if his request for discharge was accepted, he may be discharged under conditions other than honorable. He had been 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 of all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and state law. He may encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(3) He did not submit statement in his own behalf and did not desire a physical evaluation prior to separation.

d. On 4 September 1996, the separation authority approved the applicant's discharge in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation 635-200. An under other than honorable conditions discharge would be furnished and he would be reduced to private/E-1.

e. On 1 October 1996, he was discharged under the provisions of Army Regulation 635-200, Chapter 10 with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year and 9 days of active service and was awarded or authorized the Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Grenade Bar, and Sharpshooter Marksmanship Qualification Badge with Recoilless Rifle Bar.

4. By regulation, a Soldier who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. A discharge under other than honorable conditions is appropriate for a Soldier who is discharge for the good of the service.

#### 5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced 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 30 May 1978; 2) The applicant accepted nonjudicial punishments (NJPs) on 25 January 1979 and 08 June 1979 for absenting himself from his place of duty; 3) Special Court-Martial Order, dated 14 June 1979, reflects the applicant was arraigned, tried, found guilty of wrongful appropriation of a jeep on 01 March 1979 and on 07 March 1979; 4) The applicant again accepted NJPs on 24 July and 09 August 1979 for disobeying an order and being disrespectful toward a commissioned officer; 5) On 17 August 1979, the applicant was discharged, paragraph 14-33b(1), with Separation code JKA. His service was characterized as under other than honorable conditions.

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

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant reported or was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability. No additional medical documentation was provided for review.

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 mental health conditions which mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did repeatedly engage in misconduct to include wrongfully appropriation of military property. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did repeatedly engage in misconduct to include wrongfully appropriation of military property. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

The Board determined relief was not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

5/5/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5-1 (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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. Chapter 10 states a Soldier who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. A discharge under other than honorable conditions is appropriate for a Soldier who is discharge for the good of the service.

//NOTHING FOLLOWS//