

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240007967

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) to honorable.

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 he is requesting an upgrade of his general, under honorable conditions discharge to honorable. He did not understand the impact a general discharge would have, and counsel was not provided. Additionally, he was informed the accident he was involved in resulted in the passing of a Korean national which is why he opted to sign the paperwork that led to his discharge, or it would have been referred to a Korean court. He did not want to serve time. He attempted to use medical benefits from the Department of Veterans Affairs (VA) and was turned away. He has been fighting for over 30 years, to include being homeless, and found out recently he could apply for benefits if his discharge was upgraded. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 149 as a condition related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 13 August 1991.
 - b. His DA Form 2-1 (Personnel Qualification Record) shows the applicant served in Korea from 26 November 1991 through his discharge date.

c. On 30 March 1992, he accepted nonjudicial punishment for one specification of stealing a compact disc and a bottle of cologne, a value of \$43.95, on or about 20 January 1992, the property of the Main Post Exchange.

d. On 3 September 1992, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b a pattern of misconduct. The reasons for his proposed action were because of the applicant's discreditable involvement with military authorities.

e. On 4 September 1992, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may apply to the ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 year following discharge

f. On 8 September 1992, the immediate commander initiated separation action against the applicant for a pattern of misconduct. He recommended that his period of service be characterized as general, under honorable conditions.

g. On 14 September 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14-12b. He would be issued a General Discharge Certificate.

h. On 23 September 1992, he was discharged from active duty an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 1 month, and 11 days of active service with no lost time.

4. On 13 January 2025, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his claim of PTSD. The applicant was provided 30 days to submit supporting documentation. The applicant has not provided a response to date.

5. On 13 May 1996, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason for his discharge.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable. He selected PTSD on his application as related to his request.

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:

- Applicant enlisted into the Regular Army on 13 August 1991.
- On 30 March 1992, he accepted nonjudicial punishment for one specification of stealing a compact disc and a bottle of cologne, a value of \$43.95, on or about 20 January 1992, the property of the Main Post Exchange.
- On 3 September 1992, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b a pattern of misconduct. The reasons for his proposed action were because of the applicant's discreditable involvement with military authorities and habitual tardiness.
- On 14 September 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14-12b. On 23 September 1992, he was discharged from active duty with an under honorable conditions (General) characterization of service for pattern of misconduct, with separation code JKM, and RE code 3.
- On 13 May 1996, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason for his discharge.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he did not understand the impact a general discharge would have, and counsel was not provided. Additionally, he was informed the accident he was involved in resulted in the passing of a Korean national which is why he opted to sign the paperwork that led to his discharge, or it would have been referred to a

Korean court. He did not want to serve time. He attempted to use medical benefits from the Department of Veterans Affairs (VA) and was turned away. He has been fighting for over 30 years, to include being homeless, and found out recently he could apply for benefits if his discharge was upgraded.

d. Due to the period of service no active-duty electronic medical records were available for review. However, the ADRB analyst's assessment states a mental status evaluation for the purpose of separation diagnosed the applicant with Polysubstance dependence in remission and Alcohol Abuse. The evaluation further indicated the applicant presented with inconsistent work behavior, unlawful behavior, impulsivity, lying, and lacking remorse. In addition, the assessment indicates the applicant had stated he had recently gotten married prior to his tour and his "unsoldierly" behavior was an attempt to be reassigned. A memo dated 8 September 1992 states the applicant received an Article 15, "soldier was involved in a hit and run accident which he subsequently lied about".

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition. On 13 January 2025, a member of the ARBA Case Management Division requested the applicant provide medical documentation in support of his contention of PTSD. No response was provided by the applicant.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD on his application as related to his request, he does not provide any information regarding an index trauma or a rationale for his selection of PTSD on his application. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, other

than an indication of substance and alcohol abuse which in the absence of a mitigating BH condition would not provide mitigation. In addition, the VA has not service-connected the applicant for any BH condition. And while the applicant selected PTSD on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection of PTSD on his application is sufficient to warrant consideration by the Board.

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. Upon review of the evidence of record and the behavioral health opine, the Board noted there was insufficient evidence to support the applicant had a behavioral health condition that mitigated his discharge. Therefore, the Board denied relief.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

b. Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

c. Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD on his application as related to his request, he does not provide any information regarding an index trauma or a rationale for his selection of PTSD on his application. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, other than an indication of substance and alcohol abuse which in the absence of a mitigating BH condition would not provide mitigation. In addition, the VA has not service-connected the applicant for any BH condition. And while the applicant selected PTSD

on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

3. Prior to the closing of the Board it was noted the applicant's DA Form 2-1 shows he served in Korea and was entitled to the Korea Defense Service Medal. This award will be administratively added to his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.

2. The applicant's DA Form 2-1 shows he served in Korea and was entitled to the Korea Defense Service Medal. Amend the applicant's DD Form 214, ending on 23 September 1992, to show the Korea Defense Service Medal.

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. 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. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met, the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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.

6. Section 1556 of Title 10, United States Code, 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.

//NOTHING FOLLOWS//