

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240008050

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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 is receiving 100 percent service connected disability through the Department of Veterans Affairs (VA). He has been on prescribed medication from the VA for his mental health since the 1990's. He believes he was separated for misconduct rather than offered treatment for mental health issues. The applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are conditions related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 21 February 1991.
 - b. Two DA Form's 2627 (Record of Proceedings Under Article 15, UCMJ) show he accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on two separate occasions for the following offenses:

- wrongfully use marijuana between on or about 8 February 1993 and 8 March 1993, his punishment included reduction to Private/E-2
- wrongfully use marijuana between on or about 9 May 1993 and 9 June 1993, his punishment included reduction to Private/E-1

c. A memorandum dated 20 July 1993 shows due to the applicant's second time testing positive for tetrahydrocannabinol (THC) on two separate random drug screenings for the company, he was considered a Track II rehabilitation failure.

d. A DA Form 3822 (Report of Mental Status Evaluation) dated 3 August 1993 shows the applicant underwent a Command Referred mental status evaluation due to misconduct. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

e. On 17 September 1993, 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 14-12c, for commission of a serious offense. The reason for his proposed action were for two incidents of wrongful use of marijuana. The applicant acknowledged receipt on the same day.

f. On 22 September 1993, after consultation 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 character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge
- he elected not to submit a statement on his own behalf

g. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for wrongful use of marijuana. The commander recommended a general, under honorable conditions discharge.

h. On 27 September 1993, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for serious misconduct. He would be issued a general, under honorable conditions characterization of service.

i. On 20 October 1993, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of

Release or Discharge from Active Duty) shows he completed 2 years and 8 months of active service with no lost time.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, 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 applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to an honorable discharge. He contends he experienced post-traumatic stress disorder (PTSD) and other mental health conditions during his time in service that mitigate his misconduct and warrant a discharge upgrade. 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 21 February 1991; 2) He accepted NJP on 2 separate occasions for 2 positive urinalyses for marijuana between 08 February 1993 and 08 March 1993 and the second for use between 09 May 1993 and 09 June 1993; 3) The applicant was discharged on 20 October 1993, Chapter 14-12c for misconduct. His character of service was under honorable conditions (general). He completed 2 years and 8 months net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions including PTSD while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active

service. On 03 August 1993, the applicant underwent a mental status examination by a behavioral health provider, which cleared him for administrative separation from a behavioral health perspective and explicitly ruled out the presence of any unfitting behavioral health conditions.

d. A review of JLV revealed that the applicant began engaging with VA care primarily for substance use treatment beginning on 12 March 1996. On 18 March 1996, he was discharged from alcohol/substance detoxification program secondary to alcohol dependence, marijuana dependence, and cocaine abuse. During this encounter, the applicant was documented as utilizing alcohol and drugs since around the age of 15 and has used various drugs over time, including hallucinogens. He utilized psychiatric medication and psychological therapy as recent as 13 November 2024, where his diagnoses were noted as bipolar disorder, anxiety, cannabis dependence, and alcohol abuse. There is insufficient evidence that the applicant was diagnosed with PTSD at the VA. The applicant is currently 100% service-connected for schizoaffective disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient 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 including PTSD during his time in service that mitigate his misconduct. Following his time in service, he has received VA treatment for substance use disorders and mental health conditions, however, there is insufficient evidence that the applicant has ever been diagnosed with PTSD. The applicant is currently 100% service-connected for schizoaffective disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service. There is insufficient evidence that the applicant has ever been diagnosed with PTSD, however, the applicant is currently 100% service-connected for schizoaffective disorder.

(3) Does the condition experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence beyond self-report that the applicant was experiencing a mental health condition while on active service as documented by his VA service-connection for schizoaffective disorder. The applicant did engage in substance abuse while on active service which could be avoidant and self-medicating behavior. This behavior could also be a natural sequelae to some mental health conditions including

schizoaffective disorder. Therefore, per Liberal Consideration, his misconduct due to substance use may be considered mitigatable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board majority found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. One possible outcome was to deny relief based upon the applicant utilizing alcohol and drugs since around the age of 15 and subsequent misconduct; however, the Board majority concurred with the advisory official who found sufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination. The Board majority found that relief was warranted based upon guidance for consideration of discharge upgrade requests.

2. Consideration was given to the 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 including PTSD during his time in service that mitigate his misconduct. Following his time in service, he has received VA treatment for substance use disorders and mental health conditions, however, there is insufficient evidence that the applicant has ever been diagnosed with PTSD. The applicant is currently 100% service-connected for schizoaffective disorder.

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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:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant's DD Form 214 for the period ending 20 October 1993 showing his character of service as honorable, separation code JFF and the narrative reason as "Secretarial Authority."

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

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.

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. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. 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.

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.

7. 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//