

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2025

DOCKET NUMBER: AR20240008056

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Texas State Form 50-135 (Application for Disabled Veteran's or Survivor's Exemption)
- Department of Veterans Affairs (VA) medical record
- DD Form 214 (Report of Separation from Active Duty)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Hearing Test

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 trying to get a 100 percent disability rating; he cannot hear in his left ear, and he is asking for the Board's help; he is now over 70 years old
- While in the Army, he served as a mechanic
- On his application, the applicant indicated post-traumatic stress disorder (PTSD) is related to his request
- In support of his request, he provides a VA medical record, which, based upon his answers to the listed questions, shows he is crippled, and pain interferes with his sleep and other activities

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

- On 5 April 1975, the applicant enlisted into the U.S. Army Reserve for 6 years
- On 21 July 1978, the applicant's Troop Program Unit commander requested active duty orders for the applicant after determining he was an unsatisfactory participant
- On 21 August 1978, Headquarters, First U.S. Army issued orders directing the applicant to report, on 5 October 1978, to Fort Jackson, SC; he was to serve 18 months and 27 days on active duty and his ultimate assignment was to be in Germany
- On 11 November 1978, the applicant arrived in Germany, and orders further assigned him to an engineer battalion; effective 4 April 1979, his unit leadership promoted him to private first class (PFC)/E-3
- On 14 August 1979, and consistent with the applicant's pleas, a general court-martial found him guilty of the following Uniform Code of Military Justice (UCMJ) violations:
 - Article 86 (Absent without Leave (AWOL)), from 14 to 18 May 1979 (4 days)
 - Article 121 (Larceny), five specifications of stealing shoes, clothing, U.S. currency, and savings withdrawal slips
 - Article 123 (Forgery), six specification of uttering savings withdrawal slips, in varying amounts and with the intent to defraud
- The court sentenced the applicant to 24-months' confinement, forfeiture of all pay and allowances, reduction to private (PV1)/E-1, and a bad conduct discharge; The court immediately remanded the applicant to confinement, and, on 24 August 1979, orders transferred him to the U.S. Disciplinary Barracks, Fort Leavenworth, KS
- On 19 September 1979, the general court-martial convening authority approved only so much of the sentence as allowed for 18-months' confinement, forfeiture of all pay and allowances, reduction to E-1, and a bad conduct discharge
- On 21 January 1980, a general court-martial order suspended the forfeiture of all pay and allowances in excess of \$120 per month, contingent on the applicant continuing to perform satisfactorily and not violating either U.S. Disciplinary Barracks rules or the UCMJ
- On 30 January 1980, the U.S. Army Court of Military Review affirmed the findings of guilt and the sentence pertaining to the applicant's case
- Effective 18 March 1980, the U.S. Disciplinary Barracks released the applicant on parole
- On 11 April 1980, a general court-martial order announced the completion of the appellate review process and directed the execution of his bad conduct discharge; on 20 May 1980, orders separated the applicant under other than honorable conditions

- The applicant's DD Form 214 shows he completed 10 months and 9 days of creditable active duty service, with lost time from 19790814 through 19800520; it additionally reflects the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Two marksmanship qualification badges
 - Item 25 (Separation Authority) – paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - Item 26 (Separation Code) – "JJD" (As a Result of Court-Martial, Other)
 - Item 27 (Reenlistment (RE) Code) – RE-4

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR to request an upgrade of his under other than honorable conditions discharge. He contends he experienced PTSD during his time in service 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 Army Reserve on 5 April 1975; 2) On 14 August 1979, a general court-martial found the applicant guilty of: A) Going AWOL from 14 to 18 May 1979, B) Five specifications of larceny including stealing shoes, clothing, U.S. currency, and savings withdrawal slips, and C) Six specifications of forging savings withdrawal slips with the intent to defraud; 3) The applicant was discharged on 20 May 1980, AR 635-200, paragraph 11-2. His character of service was under other than honorable conditions. He completed 10 months and 9 days of creditable active-duty service, with lost time from 14 August 1979 through 20 May 1980.

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 hardcopy civilian and VA medical records provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD during his time in service that mitigates his misconduct. There is insufficient evidence that the applicant reported or was diagnosed any mental health conditions while on active service.

d. The VA's JLV was examined, and the applicant began his connection with the VA on 20 May 2008 primarily for medical and HUD services. The applicant was connected with VA mental health care beginning on 18 June 2008, and continued intermittently, primarily for the treatment of substance use/abuse. During his initial mental health encounter, he was diagnosed with major depression, severe with psychosis, alcohol

abuse, and a history of Traumatic Brain Injury (TBI). None of his providers associated his mental health symptoms with his military service. There was insufficient evidence that the applicant has been diagnosed with PTSD. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for any mental health condition including PTSD at this time.

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 contends he was experiencing PTSD at the time of his active service which mitigates his misconduct

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD at the time of his active service, which mitigates his misconduct.

(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 any service-connected mental health condition including PTSD. The applicant did engage in some avoidant misconduct such as going AWOL, which can be a natural sequelae to some mental health conditions including 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 the applicant's charges of larceny or forging documents in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of PTSD; 2) PTSD does not impact one's ability to distinguish right from wrong. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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.

2. The applicant was separated for conviction by court-martial for AWOL, larceny, and forgery. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD at the time of his active service which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD at the time of his active service, which mitigates his misconduct.

(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 any service-connected mental health condition including PTSD. The applicant did engage in some avoidant misconduct such as going AWOL, which can be a natural sequelae to some mental health conditions including 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 the applicant's charges of larceny or forging documents in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of PTSD; 2) PTSD does not impact one's ability to distinguish right from wrong. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

3. The Board concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

4. 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

: : : 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.

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 (USC), section 1552(b), provides the following:

a. 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.

b. With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-13a (Honorable Discharge). An honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the

pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 1-13b (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5 (Separation for the Convenience of the Government), Section II (Secretarial Authority), stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority and were to be based on a determination that the separation was in the best interests of the Army.

d. Paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)). A Soldier could receive a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after the affirmed sentence had been ordered duly executed.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the SPD code and the appropriate entries in item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

5. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD"; the associated narrative reason for separation was "As a Result of Court-Martial, Other."

6. AR 601-210 (Regular Army Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Regular Army (RA) enlistment program.

a. Table 4-6 (Armed Forces RE Codes, RA RE Codes) included the following list of the RE codes:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army

- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable
- RE-4 – pertained to Soldiers with a nonwaivable disqualification

b. Table 3-1 (Waiver Approval Authorities – Basic Eligibility Criteria). Line H states prior service applicants who received one or more courts-martial convictions during their last period of active service required an approved waiver to reenlist from the Commanding General, U.S. Army Military Center (MILPERCEN).

7. 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 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.

8. 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 Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); TBI; 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 to 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.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

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.

10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//