

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240008064

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Prairie View A&M University transcript showing his higher education with a Master of Arts Degree
- Paul Quinn College transcript showing his higher education
- U.S. Renal Care letter showing he was diagnosed with stage 5 chronic kidney disease
- U.S. Renal Care letter, 27 November 2023, showing he needed to be on leave from work in order to attend training required for Peritoneal Dialysis treatments
- Veterans Affairs (VA)VA letter, 19 January 2024, showing the VA has requested medical records from several doctors
- Partial social security card
- Veterans Evaluation Services, 15 May 2024, related to his appointment information, for a record review only
- VA letter, 16 May 2024, showing his claim information with a combined rating of 10 percent
- VA letter, 24 May 2024, confirming his enrollment in the VA health care system
- VA card to serve as proof he served honorably

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 while serving he was really young and suffering both mentally and emotionally due to personal issues and financial downfall raising three kids when their mother left while stationed at Fort Hood, TX. He suffered hypertension and had some kidney complications while serving. He failed to seek medical attention. Health declined over the years. He has matured through the years. His mental health has worsened since discharge transitioning into civilian life. He enjoyed his time in the military but faced obstacles. He has obtained higher education both bachelor's and master's degrees with steady employment with the state of Texas.

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

a. He enlisted in the Regular Army on 21 August 1991.

b. He served in Germany from 22 January 1992 until 1 March 1993.

c. He received nonjudicial punishment on:

- 12 June 1993, for on or about 7 June 1993, with intent to deceive, make a false official statement and on or about 6 June 1993, without authority, fail to go at the time prescribed to his appointed place of duty; he was reduced to private/E-2
- 8 November 1993, for on or about 29 October 1993, with intent to defraud, falsely make the following words and figures "72 hours quarters"; he was reduced to private/E-1 (suspended if not vacated before 8 December 1993)
- 29 March 1994, for on or about 18 February 1994 to 21 February 1994, wrongfully go outside the 200 mile radius to Louisiana; he was reduced to private/E-1 (suspended if not vacated by 29 April 1994)
- On 14 April 1994, his suspended punishment was vacated for on or about 5 April 1994, without authority, fail to go at the time prescribed to his appointed place of duty; he was reduced to private/E-1

d. On 28 April 1994, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), chapter 14 due to patterns of misconduct; he acknowledged receipt of notification.

e. He was advised by consulting counsel of the basis for the contemplated action to separate him for patterns of misconduct UP of Chapter 14, AR 635-200 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

f. His chain of command recommended approval with a general, under honorable conditions discharge.

g. The separation authority approved separation UP of AR 635-200, chapter 14 for patterns of misconduct; he directed a General Discharge Certificate be issued.

h. Accordingly, he was discharged under honorable conditions on 16 May 1994, he completed 2 years, 8 months, and 26 days net active service this period.

4. On 9 December 1996, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends mental health conditions including PTSD are related to his request. 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 August 1991; 2) The applicant received non-judicial punishment (NJP) on 12 June 1993 for with intent to deceive, made a false office statement and failed to be at his place of duty on time. On 08 November 1993, he received a NJP for a falsely created a quarters slip with intent to defraud. On 29 March, he received a NJP for going outside the 200-mile radius from 18-21 February 1994. On 14 April 1994, he failed to be at his place of duty on time and received a NJP; 3) The applicant was discharged on 16 May 1994, Chapter 14-12b for patterns of misconduct. He completed 2 years, 8 months, and 26 days net active. His service was characterized as under honorable conditions (general).

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

c. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant has been diagnosed with a service-connected mood disorder (currently 70%SC) secondary to renal disease. The applicant was initially diagnosed with this condition by the VA in 2024. The applicant

reported experiencing some symptoms of situational depression while on active service, but he did not report or was diagnosed with a service-connected mental health condition secondary to service-connected physical condition till 2024. There is insufficient evidence the applicant has reported or been diagnosed with service-connected PTSD.

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 mental health 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 experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant has been diagnosed by the VA with a service-connected Mood Disorder secondary to renal disease in 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. The applicant was diagnosed with a service-connected Mood Disorder, but this mental health condition was diagnosed in 2024, and it was related to his diagnosis of renal disease.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed with a service-connected mental health condition in 2024, but this mental health condition was related to a service-connected physical condition. There is currently, insufficient evidence beyond self-report the applicant was experiencing PTSD during his active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of false statements, falsifying documents, and going outside the 200 mile radius and 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 including PTSD; 2) the applicant's reported mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. In addition, there is insufficient evidence the applicant's current service-connected mood disorder was present during his active service as it is secondary to a current physical concern and not reported or diagnosed till 2024. 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. 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 Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The applicant received four nonjudicial punishments for making a false official statement, failing to go to his prescribed place of duty, and without authority went out of the 200 mile radius of his place of duty. As a result, he was discharged on 16 May 1994 with a general discharge. The Board also concurred with the medical advisory official who found insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct. Therefore, the Board determined there was no error or injustice and denied relief.

2. 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 contends he experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant has been diagnosed by the VA with a service-connected Mood Disorder secondary to renal disease in 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health conditions including PTSD while on active service, which mitigates his misconduct. The applicant was diagnosed with a service-connected Mood Disorder, but this mental health condition was diagnosed in 2024, and it was related to his diagnosis of renal disease.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed with a service-connected mental health condition in 2024, but this mental health condition was related to a service-connected physical condition. There is currently, insufficient evidence beyond self-report the applicant was experiencing PTSD during his active service. In addition, there is no nexus between the applicant's reported mental health conditions including PTSD and his misconduct of false statements, falsifying documents, and going outside the 200 mile radius and 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 including PTSD; 2) the applicant's reported mental health conditions including PTSD do not affect

one's ability to distinguish right from wrong and act in accordance with the right. In addition, there is insufficient evidence the applicant's current service-connected mood disorder was present during his active service as it is secondary to a current physical concern and not reported or diagnosed till 2024. 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.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 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, 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 (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Patterns of Misconduct) deals with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

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. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Paragraph 14-12b a pattern of misconduct consisting of (1) Discreditable involvement with civil or military authorities. (2) Conduct prejudicial to good order and discipline. Discredit able conduct and conduct prejudicial to good order, and discipline includes conduct violative of the accepted standards, of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit.

Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

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//