

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240008117

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 12 May 1987
- Department of Veterans Affairs (VA), Administration Decision, which shows his service from 10 August 1983 to 12 May 1987 is under dishonorable conditions and is a bar to benefits under the provisions of 38 Code of Regulations (CFR) 3.12(d)(4)
- Letter from VA, dated 12 March 2024, requesting he send any information or evidence in support of his claim.
- Letter from VA, dated 22 March 2024, providing him with important information concerning his claim
- Letter from the Veterans Evaluations Services, dated 22 March 2024, advising him of the date, time, and place of his examination

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, in effect, he remains a proud Army Airborne veteran and patriot. He received several awards during his time in the service, which is shown on his DD Form 214. His slight downfall began immediately following the appointment of a new commander, and his mental health declined due to the commander's pressures and threats. After his discharge he was immediately considered mentally ill by the social security administration and doctors he saw about his discharge.

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

a. He enlisted in the Regular Army on 10 August 1983, for a period of four years.

b. He accepted nonjudicial punishment on:

- 1 August 1986, for on or about 15 July 1986, failing to go at the time prescribed to his appointed place of duty; he was reduced to private/E-3
- 7 August 1986, for on or about 19 June 1986, wrongfully using marijuana; he was reduced to private/E-2

c. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 11 March 1987, for being absent without leave from on or about 25 September 1986 to on or about 6 March 1987.

d. On 11 March 1987, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial.

e. On 20 March 1987, his immediate commander recommended approval with characterization of service under other than honorable conditions.

f. On 29 April 1987, the separation authority approved the recommended discharge, directed he be reduced to the lowest enlisted grade and be issued an under other than honorable conditions discharge.

g. Accordingly, he was discharged under other than honorable conditions on 12 May 1987. His DD Form 214 shows he completed 3 years, 3 months, and 21 days of net active service this period. He had lost time from 25 September 1986 to 5 March 1987.

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

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.

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. 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 10 August 1983; 2) The applicant accepted nonjudicial punishments on 1 August 1986 for failing to be at his place of duty on time and on 7 August 1986 for using marijuana; 3) Court martial charges were preferred on 11 March 1987 for being AWOL from 25 September 1986-6 March 1987; 4) The applicant was discharged on 12 May 1987, Chapter 10, for the good of the service in lieu of trial by court-martial. His characterization of service was 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 behavioral health documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. 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 insufficient evidence the applicant has reported or been diagnosed with a service-connected mental health condition including PTSD. He also does not receive any service-connected disability for a mental health condition.

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 discharge.

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 on active service, which mitigates his misconduct.

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

(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 including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, using illegal drugs, and not showing up on time, which could be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient

evidence of the presence of a mental health condition at the time of active service. 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:

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 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 his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advisory official finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no evidence of PTSD, post-service achievements, or letters of reference in support of a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. 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 on active service, which mitigates his misconduct.

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

(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 including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, using illegal drugs, and not showing up on time, which could be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. 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 VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 provided that a Soldier who 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. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

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

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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//