

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240008395

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge to honorable and a personal appearance before the Board by video or telephone.

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 character of service to honorable due to racial injustice in the deep South where he was stationed. He was very young going in and was not prepared to deal with the atmosphere of racial injustice in the South. On his application, he indicated post-traumatic stress disorder and "other mental health" are related to his request.
3. On 24 February 1975, the applicant enlisted in the Regular Army at the age of 17 with parental consent. He completed initial entry training at Fort Polk, LA, and he was awarded military occupational specialty 11B (Light Weapons Infantryman).
4. On 2 April 1975, during initial entry training, he received punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for willfully disobeying a lawful order. His punishment was forfeiture of \$86 for 1 month and 7 days of confinement.
5. After completing initial entry training, he was assigned to a unit at Fort Carson, CO, where he arrived on or about 24 June 1975. On the same date, he was advanced in grade to private 2/E-2.

6. On 14 October 1975, Headquarters, Fort Carson and 4th Infantry Division (Mechanized), issued Special Court-Martial Order Number 207, which shows he was found guilty of wrongful possession of marijuana and resisting lawful apprehension. He was sentenced to be confined at hard labor for 2 months, forfeiture of \$200 per month for 2 months, and reduction to grade E-1. His sentence was to be served at Fort Riley, KS.

7. On 20 November 1975, a Medical Service Corps social worker provided a Statement of Social Work Evaluation, in which she described the applicant's upbringing and his conduct during his period of military service. She found no basis for referral for psychiatric treatment and stated the applicant had little potential for return to duty. She noted he appeared to be mentally competent to participate in board proceedings. Her impression was that the applicant had an immature personality with anti-social features, and she recommended his separation from military service for character and behavior disorder in accordance with Chapter 13, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

8. On 20 November 1975, the applicant's commander recommended he be discharged as unsuitable for a character disorder.

9. On 25 November 1975, the applicant consulted with counsel and acknowledged the recommendation to discharge him for unsuitability and his rights. He waived his rights and did not provide a statement in his own behalf. He acknowledged he understood that he could expect to encounter substantial prejudice in civilian life if an under honorable conditions (general) discharge was issued to him.

10. In an undated memorandum, the separation authority approved the applicant's discharge under the provisions of Chapter 13, Army Regulation 635-200, and directed he receive a General Discharge Certificate.

11. On 2 December 1975, he was discharged under the provisions of Army Regulation 635-200, paragraph 13-5b(2). His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows his character of service as under honorable conditions, and he completed 7 months and 19 days of net active service with 50 days of lost time.

12. Army Regulation 635-200, as in effect at the time, provided for discharge for unsuitability due to character and behavior disorders when such disorders were chronic and recalcitrant to attempts at rehabilitation and interfered with the servicemember's ability to adequately perform his duties. An individual separated because of unsuitability could be issued an honorable or general discharge certificate as determined by the separation authority.

13. By regulation, applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends mental health conditions including PTSD are related to his request for an 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 24 February 1975; 2) On 2 April 1975, the applicant received punishment for willfully disobeying a lawful order; 3) On 14 October 1975, the applicant was found guilty of wrongful possession of marijuana and resisting lawful apprehension; 4) On 2 December 1975, the applicant was discharged, Chapter 13-5b(2)-unsuitability due to character and behavior disorders. His character of service was under honorable conditions. He completed 7 months and 19 days of active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigates his misconduct. There is evidence the applicant underwent a Social Work Evaluation on 20 November 1975. The applicant was provided a clinical interview and a review of his psychosocial history. In addition, the applicant's history of negative counselings or punishment (over 20 incidents of misconduct) were listed. The results of the evaluation concluded the applicant did not demonstrate evidence of mental health condition, which would warrant a referral for psychiatric treatment. He was instead diagnosed with a Personality Disorder with Antisocial features. It was also concluded the applicant would not adjust to the military environment, and his potential for further rehabilitation would prove non-productive. He was found mentally competent to participate in board proceedings.

d. A review of JLV provided evidence the applicant initially began to engage with the VA in 1995 following the applicant's recent incarceration. The applicant was reported to have a lengthy history of repeated incarcerations related to drug possession and once for attempted murder. He initially received services from the VA for polysubstance dependence and homelessness. The applicant was also treated for depression. He underwent multiple inpatient behavioral health programs for polysubstance dependence and mental health treatment. He was also diagnosed and treated for psychosis related disorders and PTSD later in 2013. He has also been diagnosed with Antisocial Personality Disorder. In May 2024, the applicant underwent a Compensation and

Pension evaluation for PTSD. The applicant provided an inconsistent report of his childhood psychosocial history compared to his military medical record, and he also provided an inconsistent report of his history military service. The event the applicant and the evaluating provider attributed to a potentially traumatic event during his military service was repeated altercations between the applicant and other African American soldiers from Southern states. The applicant was diagnosed with service-connected PTSD (100%SC).

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 partially 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 was experiencing a mitigating mental health condition. The applicant was diagnosed with a Personality Disorder with Antisocial features on active service, and he was later diagnosed again with Antisocial Personality Disorder by the VA. The applicant has been treated by the VA for depression and psychosis-related conditions after his discharge starting in 1995. In 2024, the applicant was diagnosed with service-connected PTSD due to his repeated altercations with other Soldiers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mitigating mental health condition while on active service. The applicant was diagnosed with a Personality Disorder with Antisocial features on active service, and he was later diagnosed again with Antisocial Personality Disorder by the VA. In 2024, the applicant was diagnosed with service-connected PTSD due to his repeated altercations with other Soldiers.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partial, there is sufficient evidence the applicant was experiencing significant difficulty adjusting to the military, and he was also diagnosed with a Personality Disorder with Antisocial traits while on active service. While he was diagnosed with service-connected PTSD in 2024, the applicant provided an inconsistent report with his military experience and history prior to the military to the evaluating psychologist. The applicant was also diagnosed by the VA with Antisocial Personality Disorder, depression, and psychosis-related conditions. The applicant did engage in repeated misconduct while on active service that could be a natural sequela to PTSD and Antisocial Personality Disorder such as not following orders and using illegal drugs. However, there is no nexus between PTSD and the applicant's reported mental health condition and resisting arrest in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health condition or PTSD; 2) the applicant's reported mental

health condition nor PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. 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 record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The applicant provided no evidence of post-service achievements. The Board noted the medical advisor's review finding sufficient evidence to support the applicant had a condition or experience that partially mitigated his misconduct. Based upon the conduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing a mitigating mental health condition. The applicant was diagnosed with a Personality Disorder with Antisocial features on active service, and he was later diagnosed again with Antisocial Personality Disorder by the VA. The applicant has been treated by the VA for depression and psychosis-related conditions after his discharge starting in 1995. In 2024, the applicant was diagnosed with service-connected PTSD due to his repeated altercations with other Soldiers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mitigating mental health condition while on active service. The applicant was diagnosed with a Personality Disorder with Antisocial features on active service, and he was later diagnosed again with Antisocial Personality Disorder by the VA. In 2024, the applicant was diagnosed with service-connected PTSD due to his repeated altercations with other Soldiers.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partial, there is sufficient evidence the applicant was experiencing significant difficulty adjusting to the military, and he was also diagnosed with a Personality Disorder with Antisocial traits while on active service. While he was diagnosed with service-connected PTSD in 2024, the applicant provided an inconsistent report with his military experience

and history prior to the military to the evaluating psychologist. The applicant was also diagnosed by the VA with Antisocial Personality Disorder, depression, and psychosis-related conditions. The applicant did engage in repeated misconduct while on active service that could be a natural sequela to PTSD and Antisocial Personality Disorder such as not following orders and using illegal drugs. However, there is no nexus between PTSD and the applicant's reported mental health condition and resisting arrest in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health condition or PTSD; 2) the applicant's reported mental health condition nor PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. 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.

2. 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

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| : | : | : | 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, 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, as in effect at the time, provided for discharge for unsuitability due to character and behavior disorders when such disorders were chronic and recalcitrant to attempts at rehabilitation and interfered with the servicemember's ability to adequately perform his duties. An individual separated because of unsuitability could be issued an honorable or general discharge certificate as determined by the separation authority.
3. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//