

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240008520

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 May 2024
- Self-authored statement, 5 January 2020
- High School Diploma, 1 February 1989
- Public Safety Certificate, 18 November 1999
- Certificate of Compliance, 8 March 2000
- Four letters of Recommendation, 11 July 2000 to 9 August 2000
- Teamwork Award, 13 December 2001
- State Advanced Training Certificate, 24 May 2002
- Verification of real estate license, issued 21 July 2006
- Social Security Card, 28 March 2014
- Outpatient Substance Abuse Program Certificate, 14 August 2014
- Drug Detail Report, collected on 26 March 2018
- Work Zone Flagger Certificate, 6 November 2018
- Two pages of identifications and business cards
- Five photographs, undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200002664 on 16 March 2021.
2. The applicant states, in 1986 he joined the Army National Guard at age 19 after becoming a father and needing to provide for his family. Though he had dropped out of school, he completed Basic and Advanced Training with distinction. Motivated by his mother's encouragement, he entered a special program to earn his high school diploma and later joined the Regular Army, receiving orders to Germany.

a. While stationed overseas, he faced significant stress as a young soldier with a growing family and no access to military housing. By the time his family had joined him in Germany, he was drinking daily, which led to a driving under the influence charge, demotion in rank, and counseling's. Eventually his family was sent back to the U.S., and he served the remainder of his time alone.

b. After returning home, he received no support from the Army, but with help from his mother, he sought recovery and continues attending alcohol anonymous meetings. Despite early struggles, he went on to rebuild his life and achieve meaningful success.

3. The applicant provided seventeen pages of correspondence in support of his request that includes his certificates and licenses, identifications, photographs, drug test report, and letters of recommendations. All seventeen pages are available for the Board to view in the supporting documents.

4. A review of the applicant record shows:

a. Following prior enlisted service in [REDACTED] Army National Guard, he enlisted in the Regular Army on 27 December 1988

b. From 18 April 1989 to 4 April 1990, he was counseled on four separate occasions for the following:

- Failing to clean up fuel he had spilled on the motor pool floor
- Arriving late to work and having a bad attitude when being corrected by his superiors
- Failing to pick up his assigned weapon and transporting a military weapon in his privately owned vehicle
- Breach of peace
- Driving while intoxicated

c. On 25 August 1989, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for absenting himself from his unit without authority from 12 August 1989 and did remain so absent until on or about 14 August 1989; for willfully disobeying a noncommissioned officer order to report to his unit; and for willfully disobeying his first sergeant's order to be at home with the applicant's child. His punishment included reduction to the rank/grade of private/E-2 forfeiture of \$182.00 per month for one month (suspended), and 14 days extra duty.

d. On 9 November 1989, the [REDACTED] Community Commander, U.S. Military Community [REDACTED], issued the applicant a letter of reprimand for driving while intoxicated, on 29 October 1989.

e. On 4 January 1990, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, on to about 29 October 1989, operating a vehicle while drunk. His punishment included reduction to the rank/grade of private (PV1)/E-1, forfeiture of \$200.00 per month for two months, 45 days extra duty, and 45 days restriction.

f. On 16 March 1990, the applicant accepted NJP under the provisions of Article 15, UCMJ, for, on to about 20 February 1990, violating a lawful order by drinking while on duty. His punishment included forfeiture of \$169.00 per month for one months, 14 days extra duty, and 14 days restriction.

g. On 3 April 1990, the applicant underwent a mental status evaluation. The examining official noted the applicant did not have a psychiatric disease or disorder and cleared him for any administrative action deemed appropriate by his command.

h. On 7 May 1990, the applicant's immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12b, with the issuance of a under honorable conditions (general) characterization of service.

i. On the same day, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for pattern of misconduct under AR 635-200, chapter 14, paragraph 14-12b, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He requested a consultation with counsel and to not submit statements on his own behalf.

j. On the same day, the applicant's immediate commander recommended he be separated under the provisions of AR 635-200, chapter 14-12b. He noted the reason for his recommended action: the applicant has a pattern of misconduct consisting of uttering worthless checks, not maintaining a passing grade on Skill Qualification Test, disobeying superior noncommissioned officers on two occasions, absent without leave, operating a passenger car while drunk, violating a lawful general regulation by drinking on duty, breaking restriction, not following instructions and having a poor attitude.

k. On 8 May 1990, the applicant's intermediate commander recommended he be separated under the provisions of AR 635-200, chapter 14-12b, for pattern of misconduct.

l. On 10 May 1990, the separation authority approved the request for discharge, under the provisions of AR 635-200, chapter 14, paragraph 14-12b, for pattern of misconduct with the issuance of an under honorable conditions (general) characterization of service.

m. The applicant was discharged on 10 May 1990. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct –pattern of misconduct, in the rank/grade of private/E-1, and his service was characterized as under honorable conditions (general). He completed 1 year, 4 months, and 22 days of net active service during this period. He was assigned the separation code of “JKM” and the RE code of “3”. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- Army Service Ribbon Expert
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

5. On 16 March 2021, in Docket Number AR20200002664, the ABCMR denied his previous request for and upgrade of his under other than honorable conditions characterization of service. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of this case were insufficient as a basis for correction of his records.

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

7. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

8. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service of under honorable conditions (general). He contends he was experiencing mental health conditions including PTSD which mitigate 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) After enlisted service in [REDACTED] Army National Guard, the applicant enlisted in the Regular Army on 27 December 1988; 2) The applicant accepted non-judicial punishment (NJP), on 25 August 1989, for being AWOL from 12-14 August 1989, for disobeying an NCO’s order to report to his unit, and for disobeying his first sergeant's order to be at home with the applicant’s child; 3) On 9 November 1989, the applicant was issued a letter of reprimand for driving while intoxicated; 4) On 16 March 1990, the applicant accepted NJP for drinking while on duty; 4) On 10 May 1990, the applicant was discharged, Chapter 14-12b-pattern of misconduct. His service was characterized as under

honorable conditions (general). He completed 1 year, 4 months, and 22 days of net active service during this period.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service. On 3 April 1990, the applicant underwent a mental status evaluation. The applicant was determined to not meet criteria for a psychiatric disease or disorder, and he was cleared from a psychiatric perspective for any administrative action deemed appropriate by his command

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, including PTSD by the VA, and he does not receive any service-connected disability for a mental health condition, including 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 asserts he experienced mental health conditions including PTSD, which mitigate his misconduct.

(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 which mitigate 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 erratic and avoidant behavior, which could be a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition, including PTSD during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the 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 record and medical review, the Board concurs with the opinion of the ARBA Medical advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct.

2. Kurta Questions:

a. 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, which mitigate his misconduct.

b. 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 which mitigate 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 erratic and avoidant behavior, which could be a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition, including PTSD during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the patten of misconduct from uttering worthless checks, AWOL and operating a passenger car while drunk. As a result, the applicant was discharged for misconduct with an under honorable conditions (General) characterization of service. The Board further determined that the applicant's discharge characterization remains appropriate, as his actions did not meet the standards of acceptable conduct and performance required of Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

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 to amend decision of the ABCMR set forth in Docket Number AR20200002664, dated 16 March 2021.

X [REDACTED]

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. Army Regulation 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. 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.

b. 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

2. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12b for Misconduct-Pattern of Misconduct would receive a separation code of "JKM."

3. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.

- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

4. 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.

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 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.

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//