

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240009108

APPLICANT REQUESTS:

- an upgrade to his dishonorable characterization of service
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- CompTIA Security Plus Certificate
- Microsoft Certified: Azure Security Engineer Associate
- Restoration of Voter Rights, [REDACTED]
- DD For 214 (Certificate of Release or Discharge from Active Duty)

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:

a. He was stationed in Wiesbaden, Germany at Camp Pieri as a 27E (Tow/Dragon Repairer). He was an above average soldier. They repaired and did cosmetic work on vehicles using paint (Toluene and Benzin). The exposure to the chemicals in the paint started around June 1986. He experienced bad headaches, nausea and vomiting after painting in the makeshift paint room that barely had ventilation or proper masks to wear while painting. Their back log was very high, so instead of going to sick call he just took some pain relievers and continued to work.

b. In June 1988, the overwhelming paint fumes was so bad he almost passed out. He sought medical attention, and the doctor diagnosed him with Toluene exposure. He

was told to take pain relievers and stay away from the paint room. This information is documented in his record. The pressure of having a child out of wedlock, getting married and trying to be a good soldier, on top of his mental instability was too much for him to handle. He received multiple Article 15's which reduced him from sergeant/E-5 promotable to private first class/E-3, he struggled financially and could not get help.

c. He left Germany and went to Fort Campbell, Kentucky in September 1991. He continued to struggle financially and could not make ends meet. The stress of being a husband, father and trying to Soldier started him to smoke marijuana and commit crimes for money to make ends meet. His military career eventually ended in 1993 with a general court martial and confinement at Fort Leavenworth, Kansas. His wife divorced him, and his kids had to live with his parents. He did well enough in confinement that he was paroled after one year. Upon his release his struggles continue, and he was incarcerated a few times for committing crimes due to his financial hardship, he was never a violent offender. He got married for the second time in 1997 and the same year his oldest daughter was born. His marriage did not last long due to his anxiety and depression issues.

d. He met someone in 2004 and got married in 2008 and his youngest daughter was born the same year. His current wife is prior military and has helped him cope with his issues by listening, supporting and encouraging him to better himself. He is 57 years old now and suffers from constant headaches, orthopedic issues, and the depression and anxiety issues that originated while he was in the military. He has slowly been able to get his life together. He has filed his Veterans Administration disability claim, was granted a secret security clearance, his rights to vote have been restored, and he has received his Security Plus and Microsoft Azure certifications.

e. He is proud that he served. The Army made him who he is today. Without military discipline, his life would have ended up a lot worse. But he truly believes the exposure to those toxic chemicals played a huge part in the deterioration of his mental health, which then led to the circumstances of his dishonorable discharge. After over 30 years, he is humbly requesting a discharge upgrade. Additionally, the applicant marked on his DD Form 149, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and other mental health issues, are conditions related to his request.

3. The applicant provides

- two certificates showing certification in Security Plus and Microsoft Azure dated 19 January 2024
- reinstatement of his voter's rights from [REDACTED]

4. A review of the applicant's service records show:

- a. He enlisted in the Regular Army on 7 August 1985.
- b. His DA Form 2 - 1 shows he served in Germany from 16 May 1986 to 18 September 1989.
- c. On 13 July 1993, he was convicted by a general court-martial of the following:
 - one specification of wrongful use of marijuana (8 December 1992 and 8 January 1993)
 - three specifications of larceny of personal property of some value,
 - three specifications of forgery
 - one specification of fraudulent separation, (12 February 1993)
 - one specification of desertion (12 February 1993 until 8 April 1993)
 - two specifications of signing a false official record (12 February 1993)
 - one specification of larceny of private property of a value of \$1050.00
 - one specification of forgery (8 December 1992 and 15 December 1992)
- d. On 7 October 1993, the convening authority approved so much of the sentence as provides for reduction to private, E-1, forfeiture of all pay and allowances, a fine of \$1,200.00, and confinement for 40 months; and except for that part of the sentence extending to a dishonorable discharge, ordered it executed. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.
- e. The applicant on an unspecified date petitioned for a grant to have a review of the decision of the USACMR. The USACMR considered his case and denied his petition for a review of his case on 29 June 1994.
- f. General Court-Martial Order Number 248 dated 30 August 1994, after Article 71(c) was complied with and the sentence was affirmed, ordered the dishonorable discharge executed.
- g. On 16 September 1994, he was discharged from active duty with a dishonorable characterization of service. His DD Form 214 shows he completed 7 years, 4 months, and 5 days of active service with approximately 97 days of lost time. It also shows he was awarded or authorized:
 - Army Good Conduct Medal (2nd award)
 - National Defense Service Medal
 - Army Achievement Medal (2nd award)
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Air Assault Badge

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-200), a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

7. By law, court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (USC), Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable characterization of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues 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 07 August 1985, 2) on 13 July 1993, he was convicted by a general court-martial of the following: wrongful use of marijuana (8 December 1992 and 8 January 1993); three specifications of larceny of personal property of some value; three specifications of forgery; fraudulent separation (12 February 1993); desertion (12 February 1993 until 8 April 1993); two specifications of signing a false official record (12 February 1993); larceny of private property of a value of \$1050.00; and forgery (8 December 1992 and 15 December 1992), 4) the applicant was discharged on 16 September 1994, under the provisions of AR 635-200, paragraph 3-10, by reason of "As a result of court-martial-other," and with a separation code of JJD.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during

the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Medical Examination dated 25 February 1985 for the purposes of enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. He was deemed medically qualified for enlistment. There were no BH records available for review.

d. A review of JLV shows the applicant is 20% service connected through the VA for Tinnitus and Limited Motion of Ankle. He is not service-connected for any BH conditions. VA treatment records show he was diagnosed with Depressive Disorder, Unspecified on 08 January 2025; however, the date of onset of this condition was not specified nor was it documented that the condition existed during service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD, TBI, and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his discharge was related to PTSD, TBI and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during service and he provided no medical documentation supporting his assertion of PTSD, TBI, or Other Mental Health Issues associated with his military service. Furthermore, he is not service-connected through the VA for any BH conditions. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD, TBI, or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, TBI, and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 also reviewed and concurred with the medical review. The applicant was convicted by a general court-martial for one specification of wrongful use of marijuana, three specifications of larceny of personal property of some value, three specifications of forgery, one specification of fraudulent separation (12 February 1993), one specification of desertion (12 February 1993 until 8 April 1993), two specifications of signing a false official record (12 February 1993), one specification of larceny of private property of a value of \$1050.00, one specification of forgery (8 December 1992 and 15 December 1992) and discharged as a result of a court-martial. The Board found no error or injustice in the court-martial proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The Board considered the following Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his discharge was related to PTSD, TBI and Other Mental Health Issues.

b. Did the condition exist, or experience occur during military service? Yes, per the applicant's assertion.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during service and he provided no medical documentation supporting his assertion of PTSD, TBI, or Other Mental Health Issues associated with his military service. Furthermore, he is not service-connected through the VA for any BH conditions. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD, TBI, or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, TBI, and Other Mental

Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

3. 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.

4/16/2025

X

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 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

a. Paragraph 3-7a (Honorable discharge) states 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 the acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General discharge) states 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. Paragraph 3-7c (Under Other Than Honorable Conditions) states 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, fraudulent entry, homosexuality, security reasons, or for the good of the service.

d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.

4. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

5. 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 post-traumatic stress disorder (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.

6. 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, traumatic brain injury, 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, 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.

7. 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 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.

8. 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//