

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240009244

APPLICANT REQUESTS:

- in effect, a different narrative reason for separation
- amend item 12b (Separation Date This Period) of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect "7 June 1995" instead of "1 June 1995"
- appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Medical Troop Support Squadron, Third Armored Cavalry Regiment, Fort Bliss, TX, memorandum (Duty Appointment Orders), 12 October 1994
- DA Form 31 (Request and Authority for Leave), 1 May 1995
- Request for Separation/Retirement Travel Advance and Intent to Travel Statement, 15 May 1995
- Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX, Orders 108-11, 18 April 1995
- DD Form 214, for the period ending 1 June 1995

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 scheduled to take his end of service leave on 31 May 1995. Prior to signing out on leave, he was called into his commander's office and was told he would be chaptered out of the service for failing the weight control program. This occurred during the last 7 days of his service. He had been on weight control protocols for some

time but had not failed a physical fitness test. He was informed by his First Sergeant that this was due to the active chaptering of a noncommissioned officer in the troop, and it was deemed inequitable to chapter him if he was not going to be chaptered. His leave was pulled, and he was ordered to stay until the chapter action was complete. He was the noncommissioned officer in charge of communications as a private first class despite higher ranking Soldiers in his squad. However, he was unable to be promoted due to the weight control regulations at the time.

b. He was unaware of any appeal process. After his discharge he had an appointment with the Veterans Affairs representative who told him of the appellate process. He was further told of support for the traumatic brain injury (TBI) that he suffered during advanced individual training in 1993 at Fort Gordon, GA. He believes his TBI may be related to his weight control issues. His weight hovered above the unrealistic norm for a man his size.

3. On his DD Form 149, the applicant indicates TBI is related to his request.

4. The applicant enlisted in the Regular Army on 8 June 1992.

5. His available records contain numerous counseling statements and memoranda starting on 12 January 1994, showing he was counseled for failing to comply with weight control standards in accordance with Army Regulation 600-9 (The Army Weight Control Program). For each counseling he acknowledged receipt and his understanding of the consequences including separation and type of characterization of discharge.

6. The Weight Control Officer, Medical Troop, Support Squadron, Third Armored Cavalry Regiment, Fort Bliss, TX, memorandum (Weight Control Program), dated 26 January 1994, notified him that he had been determined to exceed body fat standards, was flagged, was entered in the weight control program. He acknowledged and signed his understanding on the same date.

7. On 1 May 1995, the applicant's immediate commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 18, for failure to meet the body fat standards. He cited his inability to make satisfactory progress while enrolled in the overweight program since 26 January 1994 and having displayed an inability to achieve and keep up with the weight control standards. He recommended an honorable characterization of service.

8. On the same date, he acknowledged that he has been advised by counsel of the contemplated separation action, its effect; the rights available to her; and the effect of any action taken by her in waiving her rights. He understood that if he had less than six years of total active service at the time of separation, she would not be entitled to have

her case heard by an administrative separation board. He further acknowledged, that he would be ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge. He elected to submit statements in his own behalf and waived consulting counsel.

9. In a 11 May 1994 statement, he noted he should not be chaptered out of the Army. He understands he has not met the weight control requirements and has not made satisfactory process while in the program but feels he has physical and stress-related reasons for his failing. He has 18 days left until his commitment is finished and would like to collect his benefits he has earned (see attachment for further details).

10. On an unspecified date, his immediate commander recommended he be separated under the provisions of Army Regulation 635-200, Chapter 18 for overweight.

11. The separation authority approved the recommended separation on an unspecified date, under the provisions of Army Regulation 635-200, Chapter 18, directed that his characterization of service be honorable, and that he be transferred to the Individual Ready Reserve to complete his statutory obligations.

12. Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss Orders 108-11, on 18 April 1995 (Corrected Copy) reassigned him to the transition point with a release date from active duty of 1 June 1995 and assignment to the U.S. Army Reserve (USAR) Control Group (Reinforcement).

13. He was honorably released from active duty on 1 June 1995 and transferred to the USAR Control Group (Reinforcement). His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 18, by reason of weight control failure. His completed 2 years, 11 months, and 24 days of active service and his service was characterized as honorable with a separation code of "LCR."

14. USAR Personnel Command, St. Louis, MO, Orders D-03-015965, on 14 March 2000 honorably discharged him from the USAR.

15. He provides:

a. A Medical Troop Support Squadron, Third Armored Cavalry Regiment, Fort Bliss, TX, memorandum (Duty Appointment Orders), on 12 October 1994 shows duty appointment orders, effective 12 October 1994.

b. DA Form 31, on 1 May 1995 showing he submitted and was approved for transitional leave from 31 May 1995 to 7 June 1995. This form does not show he was signed out/departed on transitional leave.

c. Request for Separation/Retirement Travel Advance and Intent to Travel Statement, on 15 May 1995 shows he requested transition leave for the period 31 May 1995 to 7 June 1995.

d. Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX, Orders 108-11, on 18 April 1995 shows his reassignment date to the transition point and his release from active duty as 7 June 1995.

16. Based upon the applicant's contention of TBI and other mental health issues, the Review Boards Agency medical staff provides a written review of the applicant's medical records, outlined in the "MEDICAL REVIEW" section of this Record of Proceedings

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge and other corresponding changes to his DD-214. He contends he experienced traumatic brain injury (TBI) that mitigates 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) The applicant enlisted in the Regular Army on 08 June 1992; 2) The applicant received at least 3 counseling statements and memoranda beginning on 12 January 1994 for failure to comply with weight control standards; 3) The applicant was discharged on 01 June 1995, Chapter 18- by reason of weight control failure. His character of service was honorable. He completed 2 years, 11 months, and 24 days net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced a TBI that mitigates impacting his discharge. There is insufficient evidence the applicant reported or was diagnosed with a TBI while on active service. The applicant reported that they may have experienced a TBI during training that he noted was discussed with a VA provider. No additional medical or mental health documentation was provided/available from his time in service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected TBI. He connected with the VA 10 June 2022 after applying for disability for orthopedic injuries. The applicant has not been diagnosed with a service-connected medical or mental health condition, and he does not receive service-connected disability at this time.

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 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 a TBI, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI while on active service. The applicant reported experiencing a TBI during military training.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with a TBI during active service. Yet, the applicant contends he experienced a TBI while on active service that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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, and regulation. The Board considered the applicant's statement, record of service, and the reason for separation. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced a TBI, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with a TBI during active service.

2. The Board concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that warrants a change to the

narrative reason for separation. The Board further found no evidence to support a change to the date of separation.

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 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 Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 600-9 (The Army Weight Control Program) establishes policies and procedures for the implementation of the Army Weight Control Program.

4. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Chapter 18 states Soldiers who fail to meet the body fat standards set forth in Army Regulation 600-9 are subject to separation per this chapter when such condition is the sole basis for separation.

b. Separation action may not be initiated under this chapter until the soldier has been given a reasonable opportunity to comply with and meet the body fat standards, Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter. If no medical condition exists, initiation of separation proceedings is required for soldiers who do not make satisfactory progress in the program after a period of 6 months, unless the responsible commander chooses to impose a bar to reenlistment per Army Regulation 601-280, chapter 6. Also, initiation of separation proceedings is required for soldiers who fail to meet screening table weight and body fat standards during the 12-month period following removal from the weight

control program, provided no medical condition exists. Soldiers without medical limitations who exceed the screening table weight and body fat standards after the 12-month period but prior to 36 months following removal from the program, and who do not meet the standards during the 90-day period prescribed by Army Regulation 600-9, will be processed for separation.

c. Separation action under this chapter will not be initiated against a soldier who meets the criteria for separation under other provisions of this regulation. For example, a soldier who, wholly apart from failure to meet body fat standards, is an unsatisfactory performer will be processed for separation under the provisions of chapter 13.

d. The service of soldiers separated per this chapter will be characterized as honorable.

5. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators (SPD) Codes), in effect at the time, prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the SPD to be used for these stated reasons. It shows separation by chapter 18 of Army Regulation 635-200 the reason of separation to be "weight control failure" and the SPD code of "LCR."

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//