

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009288

APPLICANT REQUESTS:

- reconsideration of his previous requests to upgrade his general, under honorable conditions discharge
- a personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 Numbers AR20210005583 on 16 September 2021 and AR20230008722 on 6 March 2024.

2. The applicant states he is seeking an upgrade of his discharge to honorable. He served his country, and his discharge was an error and an injustice. He never went before the Judge Advocate General nor did he have a fair judgement or decision in his dismissal. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 149 as an issue related to his request.

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

- a. He enlisted in the Regular Army on 28 December 1989.
- b. His DA Form 2-1 (Personnel Qualification Record shows the applicant completed foreign service in Germany from 27 April 1990 to 16 March 1992.
- c. A 19-page case report from the Wichita Falls, Kansas Police Department dated 16 July 1992 which shows he was held by civilian authorities from 16 July 1992 to 25 July 1992 for robbery and damage of the following:
 - black leather fanny pack valued at \$40.00

- \$140.00 in cash
- Magnavox VCR valued at \$300.00
- AM/FM cassette jam box valued at \$100.00
- damage to bedroom door

d. A DA Form 3822 (Report of Mental Status Evaluation) dated 28 July 1992 shows the applicant underwent a mental status evaluation. The report noted he had no significant mental illness and had the mental capacity to understand and participate in board proceedings. He was psychiatrically cleared for administrative separation.

e. On 4 August 1992, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was the applicant being charged by civil authorities for aggravated robbery. The applicant acknowledged receipt on the same day.

f. On 4 August 1992, after consultation with defense counsel of the Judge Advocate General legal office, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge
- he elected not to submit a statement on his own behalf

g. The immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for being charge by civil authorities for aggravated robbery. The commander recommended a general, under honorable conditions discharge certificate.

h. The separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

i. On 10 August 1992, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 7 months, and

3 days of active service with 10 days of lost time from 16 July 1992 to 25 July 1992. It also shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Marksman Marksmanship Qualification Badge with Hand Grenade Bar

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within the Boards 15-year statute of limitations.

5. On 16 September 2021, the ABCMR rendered a decision in Docket Number AR20210005583. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. The Board found no post-service evidence or references to support clemency. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

6. On 6 March 2024, the ABCMR rendered a decision in Docket Number AR20230008722. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on the preponderance of evidence, the Board determined reversal of the previous Board decision is without merit and denied relief.

7. 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.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

b. 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:

- The applicant enlisted into the Regular Army on 28 December 1989.
- A 19-page case report from the Wichita Falls, Kansas Police Department dated 16 July 1992 shows he was held by civilian authorities from 16 July 1992 to 25 July 1992 for robbery and damage of the following: leather fanny pack, \$140 cash, a VCR, a cassette jam box, and a bedroom door.
- On 4 August 1992, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was the applicant being charged by civil authorities for aggravated robbery.
- The applicant was discharged on 10 August 1992, and he completed 2 years, 7 months, and 3 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his discharge was in error and an injustice, and he endorsed PTSD as an issue/condition related to his request. A Report of Mental Status dated 28 July 1992 showed the applicant's mood as "depressed," but it was noted that he met retention standards and was psychiatrically cleared for administrative action. A Medical Review from an ABCMR case in September 2021 concluded that an upgrade was not supported, and another ABCMR case dated in March 2024 also concluded that there was insufficient evidence to support mitigation of the applicant's misconduct. This application did not include any additional mental health or medical records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant is 50% service connected through the VA for PTSD with an original effective date of March 2020. There is no documentation available from his time in service, and his initial mental health note from the VA was on 27 May 2021. He reported nightmares, flashbacks, and headaches since 1993, which he attributed to a traumatic car accident. He also discussed his substance use (alcohol and cocaine) secondary to events he witnessed during

deployment. His diagnoses were PTSD, Alcohol Use Disorder, and Insomnia. In July 2021 he was admitted to a psychiatric inpatient program due to worsening symptoms, and his medications were adjusted. He was discharged to the VA's Residential Rehabilitation Treatment Program for PTSD and substance abuse. He continued in outpatient treatment and was referred to the Trauma Recovery Program in October 2022. He engaged in several sessions of evidence-based psychotherapy treatment for trauma focusing on a "bombing at night club." In April 2023 he was discharged from this program due to lack of full engagement, multiple missed appointments, and interference with psychosocial stressors and work obligations. He has continued to utilize outpatient psychotherapy and medication management services, and his most recent contact was on 26 February 2025 where it was noted he was again requesting trauma-focused treatment.

e. Based on the available information, this Agency Behavioral Health Advisor concurs with the two previous BH Advisors' opinions that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. Documentation from his time in service show only a report of depressed mood and indicated the applicant met retention standards. VA documentation showed that the applicant was diagnosed with PTSD in 2021 and has received inpatient, residential, outpatient, and medication management treatments. He is 50% service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Records indicate several traumatic events that occurred before, during, and after his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant has been diagnosed with PTSD by the VA since 2021. However, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to aggravated robbery: 1) this type of misconduct is not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates 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 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 found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The evidence of record shows the applicant enlisted in the Regular Army on 28 December 1989 and served in Germany from April 1990 to March 1992. He was discharged on 10 August 1992 with a general, under honorable conditions characterization of service following civilian charges for aggravated robbery and damage to property. A mental status evaluation found no significant mental illness and confirmed his capacity to participate in separation proceedings. The Board noted the applicant's contention that his separation was unjust and that he did not receive fair legal judgment. He also identified post-traumatic stress disorder (PTSD) as a factor related to his request. The Board reviewed and concurred with the medical advisor's review, in agreement with two prior reviewers, that there is insufficient evidence to support that the applicant had a behavioral health condition or experience that would mitigate his misconduct. The Board concluded the applicant's discharge was based on serious misconduct substantiated by civilian charges, and the medical review does not support mitigation due to behavioral health concerns; therefore, relief was not warranted.

2. Based upon the misconduct 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 discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. Documentation from his time in service show only a report of depressed mood and indicated the applicant met retention standards. VA documentation showed that the applicant was diagnosed with PTSD in 2021 and has received inpatient, residential, outpatient, and medication management treatments. He is 50% service connected for PTSD.

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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
:XX	:XX	:XX	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 amendment of the ABCMR decision rendered in Docket Numbers AR20210005583 on 16 September 2021 and AR20230008722 on 6 March 2024.

X //SIGNED//

CHAIRPERSON

Signed by:

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 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.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets 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 member'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 issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

3. 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.

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, 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.

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 (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 based on 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.

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//