

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009328

APPLICANT REQUESTS: in effect,

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- to change is separation code and narrative reason for separation
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 21 August 1980
- Medical Records (4 pages), which shows the applicant was diagnosed with psychotic disorder, not otherwise specified, alcohol abuse, cocaine abuse, post traumatic stress disorder (PTSD), and elevated cholesterol (These documents are available for review by the Board in the supporting documents)
- Memorandum, subject: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD, 3 September 2014
- Florida Department of Corrections Health Slip/Pass, dated 24 July 2023, which shows he had restricted activity, wherein he could not push/pull/lift more than 20 pounds, no prolonged standing for more than 30 minutes, and a low bunk pass
- Psychological Evaluation for Sanity and Competency dated 24 July 2009, (These documents are available for review by the Board in the supporting documents)

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, in effect, he is requesting a discharge upgrade, claiming PTSD per the Memorandum from Secretary of Defense, dated 3 September 2014, consideration of mitigating factors noted by Dr. J_C_ for diagnosis; causative factors creating inability to maintain acceptable standards of retention while in service. He has a mental disorder for which he needs specialized treatment. He has yet to receive service-connected funds, or the treatment recommended by the Department of Veterans Affairs and the Escambia County Jail Psychiatrist.

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

a. He enlisted in the Regular Army on 5 September 1978.

b. He accepted nonjudicial punishment under Article 15, Uniform Code of Military Justice on:

- 27 March 1979, for on or about 19 March 1979, being derelict in the performance of his duties by failing to remain awake while in class
- 7 March 1980, for on or about 19 January 1980, being disrespectful in language to sergeant J_R_, his superior noncommissioned officer
- 21 April 1980, for failing to go at the time prescribed to his appointed place of duty, on or about 5 April 1980. He was reduced to private/E-2 (suspended for 120 days and vacated on 9 May 1980 and the unexecuted portion was duly executed)
- 16 May 1980, for failing to obey a lawful order on or about 4 May 1980. He was reduced to private/E-1 (suspended for 120 days and vacated on 3 July 1980 and the unexecuted portion was duly executed)

c. On 3 July 1980, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, Expeditious Discharge Program (EDP). The commander listed the following reason for the proposed separation:

- Inability to adapt socially or emotionally
- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Cannot adjust to Army environment

d. He acknowledged receipt on 21 July 1980.

e. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

f. On 24 July 1980, the applicant signed a statement electing not to undergo a separation medical examination.

g. A Report of Psychiatric Evaluation dated 25 July 1980, which shows there was no mental disorder diagnosed. The psychologist stated there was no evidence of significant psychopathology at that time. The applicant's intelligence and judgment appeared to be within normal limits and there was no psychological reason to interfere with discharge under chapter 5.

h. On 11 August 1980, the immediate commander formally recommended approval, with a general, under honorable conditions discharge.

i. On 12 August 1980, the separation authority approved the separation and directed he receive a general, under honorable conditions discharge.

j. The applicant was discharged on 21 August 1980. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention (EDP), in the rank/grade of private/E-1, and his service was characterized as under honorable conditions (general). He completed 1 year, 11 months, and 17 days of net active service during the covered period and his separation code was "JGH."

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

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends that he experienced posttraumatic stress disorder (PTSD) 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 5 September 1978; 2) He accepted NJP on: A) On 27 March 1979, for failing to remain awake while in class, B) on 7 March 1980, for disrespectful language towards a superior NCO, C) on 21 April 1980, for failing to go at the time prescribed to

his appointed place of duty, D) on 16 May 1980, for failing to obey a lawful order; 3) The applicant was discharged on 21 August 1980, AR 635-200, paragraph 5-31- failure to maintain acceptable standards for retention (EDP). His character of service was under honorable conditions (general). He completed 1 year, 11 months, and 17 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and medical records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. The applicant underwent a separation psychiatric evaluation on 25 July 1980 by an active-duty psychologist as a part of his Chapter V separation process. During this evaluation, the applicant did not report any mental health symptoms and was not diagnosed with any mental health condition and was cleared from a mental health perspective for separation. The applicant also provided an undated mental status evaluation from his time in service, conducted by a medical provider, which also cleared him from a mental health perspective.

d. A review of JLV revealed that the applicant was connected with VA medical and mental health care between 10 November 2004 to 16 December 2008 due to mental health concerns and substance use that the applicant's providers asserted occurred following his time in service. The applicant has not been diagnosed with a service-connected mental health condition and does not receive any service-connected disability.

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 PTSD during his time in service, which mitigates his misconduct. There was insufficient evidence that the applicant was diagnosed with PTSD during his time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service. There was insufficient evidence that the applicant was diagnosed with PTSD during his time in service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant has been diagnosed with or treated for PTSD that occurred during military service. The applicant did engage in avoidant and erratic behavior during active service such as failing to follow orders, failing to stay awake, and using disrespectful language. These behaviors can be natural sequelae to some mental health conditions, including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced a mental health condition or experience 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. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official. Based on this, the Board determined the applicant's characterization, separation code, and narrative reason for separation at the time of separation was appropriate and a change is not required.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD during his time in service, which mitigates his misconduct. There was insufficient evidence that the applicant was diagnosed with PTSD during his time in service.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service. There was insufficient evidence that the applicant was diagnosed with PTSD during his time in service.

c. Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant has been diagnosed with or treated for PTSD that occurred during military service. The applicant did engage in avoidant and erratic behavior during active service such as failing to follow orders, failing to stay awake, and using disrespectful language. These behaviors can be natural sequelae to some mental health conditions, including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced a mental health condition or experience while on active service that

mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 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 and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-31 provides for separating enlisted members under the expeditious discharge program (EDP). This program provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions may be separated when they have failed to respond to counseling (DA Form 4856, General Counseling Form). The criteria in section VIII, chapter 1, will govern whether the member will be released from active duty with transfer to the IRR, or be discharged. A discharge general, under honorable conditions is normally appropriate for a Soldier discharged under this chapter.

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

d. No member will be separated under this program unless the Army member voluntarily consents to the proposed separation. The Army member's acceptance of separation may not be withdrawn after the date the separation authority approves the separation.

3. Army Regulation 635-5-1 (Separation Program Designators) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation code to be entered on the DD Form 214. It identifies the separation code "JGH" as the appropriate code to assign to enlisted personnel administratively discharged under the provisions of Army Regulation 635-200, paragraph 5-31, based on the Expedious Discharge Program for failure to maintain acceptable standards for retention.

4. 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 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.

5. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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.

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.

7. 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.

8. 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.

//NOTHING FOLLOWS//