

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240009363

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- 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. 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 his behavior issues and physical training performance were not substandard. His immature decisions have been resolved with age, wisdom, and counseling. He desires this upgrade to make himself and his family proud.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 11 July 1985.
 - b. He received a letter of reprimand on 28 April 1986 and 17 September 1986 for failing the Army Physical Readiness Test.
 - c. He accepted nonjudicial punishment on:
 - 20 November 1986, for on or about 14 October 1986, stealing a cassette tape, valued at about \$4.71; he was reduced to private/E-1
 - 18 March 1987 for:
 - on or about 12 February 1987, willfully disobeying a lawful order from a noncommissioned officer

- on or about 11 March 1987, being derelict in the performance of his duties by negligently failing to maintain his personal area
- on or about 11 March 1987, failing to go at the time prescribed to his appointed place of duty
- on or about 13 March 1987, willfully disobeying a lawful written order issued by the Installation Commander

d. On 15 May 1987, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), chapter 13, due to unsatisfactory performance. He acknowledged on 15 May 1987.

e. On 18 May 1987, his immediate commander recommended approval with an under honorable conditions discharge.

f. On 21 May 1987, the separation authority approved the separation and directed the applicant be issued an under honorable conditions (general) discharge. He waived the rehabilitative transfer.

g. Accordingly, he was discharged under honorable conditions on 8 June 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 10 months, and 28 days of net active service this period.

4. On 4 December 1992, the Army Discharge Review Board determined that the applicant was properly and equitably discharged and denied the applicant's request for a change in the character and/or reason for his discharge.

5. 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.

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 mental health conditions that 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) The applicant enlisted in the Regular Army on 11 July 1985; 2) He received a letter of reprimand on 28 April 1986 and 17 September 1986 for failing the Army Physical Readiness Test (PRT); 3) He accepted NJP on 20 November 1986 for larceny and on 18 March 1987 for two counts of disobeying an order, one count of being derelict in the performance of his duties, and one count of failing to go to his place of duty; 4) The applicant was discharged on 08 June 1987, Chapter 13-

unsatisfactory performance. His character of service was under honorable conditions (general). He completed 1 year, 10 months, and 28 days of net active service. 5) On 04 December 1992, the ADRB previously reviewed and ruled that his discharge was proper and equitable.

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) 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 other mental health conditions during his time in service that mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV indicated that the applicant has engaged in physical medical care as a military dependent. However, there was insufficient evidence that the applicant has been previously diagnosed with a mental health condition or received mental health treatment. There is insufficient evidence that the applicant is currently service connected for any condition or has received any treatment through the VA.

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 during his time in service, which mitigates his misconduct.

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

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence that the applicant has ever been diagnosed or treated for a mental health condition. The applicant did engage in avoidant or erratic misconduct such as not following orders and having trouble maintaining military standards, which can be a natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. The applicant also engaged in the misconduct of larceny. There is no nexus between this type of misconduct and the applicant's reported mental health conditions in that: 1) This type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions; 2) The applicant's reported mental health conditions broadly

do not affect one's ability to distinguish right from wrong and act in accordance with the right. 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, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service.

a. The applicant seeks an upgrade of his discharge characterization from under honorable conditions (General) to honorable, citing personal growth and alleged mental health conditions during his time in service. While the Board acknowledges the applicant's desire to make his family proud and recognizes his assertion of post-service maturity, these factors do not establish error or injustice in the original discharge action.

b. The applicant was discharged under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance. His record reflects multiple instances of misconduct, including repeated failures to meet physical readiness standards, disobedience of lawful orders, dereliction of duty, and larceny. He was afforded due process, including legal counsel, and the separation authority appropriately directed a general discharge.

c. The Board noted the applicant's contention that mental health conditions during service mitigated his misconduct. However, in concurrence with the medical advisor's review, there is insufficient evidence to support that the applicant was diagnosed with or treated for any mental health condition during his period of active duty. The Joint Legacy Viewer confirms no record of service-connected conditions or VA treatment.

2. 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 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 provides commanders will separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

(3) It is likely that the member will be a disruptive influence in present or future duty assignments.

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(5) The ability of the member to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(6) The member meets retention medical standards (AR 40-501).

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. 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.

4. 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.

5. 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.

6. 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//