

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240009401

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (General)
- a personal appearance hearing before the Board (via video/telephone)

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

- DD Form 149 (Application for Correction of Military Record), 6 May 2024
- Self-authored statement, 6 May 2024
- Two letters of commendation for outstanding service, from 12 August 1982 to 20 October 1982
- Diploma (Food Service Specialist), 31 January 1983
- Certificate of Achievement, 5 September 1983
- Army Achievement Medal Certificate, 7 September 1984
- Two Non-Commissioned Officer (NCO) Academy Diplomas, 16 May 1969 and 24 January 1992
- DA Form 1059 (Service School Academic Evaluation Report), 29 June 1997
- Certificate of Qualification (Kenya Army), 19 November 1988
- NCOs Academy Diploma, 16 May 1989
- Certificate of Training (The Air Assault School), 22 January 1990
- Certificate of Promotion to Staff Sergeant (SSG), 23 January 1988
- Diploma (U.S. Army Soldier Support Institute), March 1990
- Army Commendation Medal Certificate, 12 May 1990
- Two DA Forms 2166-7 (NCO Evaluation Report), covering the period from June 1990 to December 1991
- Certificate (Food Service Sanitation Certification Program), 24 January 1992
- Three Certificates of Completion, from December 1996 to June 2003
- Two Dean's Honor List Certificates, 2003 and 2004
- Community College Unofficial Transcripts, 27 January 2005
- State Certificate (Massage Therapist), September 2005
- Two Certificates of Employment, 15 May 1998 and 20 April 2011
- Two Character Statements, 19 March 2024 and 20 March 2024

- Doctor's letter acknowledging depressive disorder, alcohol disorder, and anxiety disorder, 6 December 2024

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 would like an upgrade to his characterization of service due to post traumatic stress disorder, insomnia and anxiety disorder, and other mental disorders. While on active duty he made mistakes by not following up on the mental crisis he was going through. He was a SSG with over nine years in the Army. He performed outstanding in the schools he attended while on active duty and asserted the best to maintain the highest esprit de corp. After being on recruiting duty for more than two years, working twelve to fifteen hours each day, he started to have personal problems for which he did not seek the proper help that may have been there for him and his family.

b. He always tried to do the right thing. He is active in his church and community as he encourages young people to be good stewards and continue their education and/or go into the military. He has always expressed that he should have done right, even when he was going through difficult times. He should have trusted his leadership to help him through his mental issues. He is not the same old person he was back then, and he is asking for a second chance at life.

c. After his discharge, he became an emergency medical technician and an emergency room technician. He also earned an associate degree in applied sciences. The degree enabled him to take the New York State Board exam where he became a licensed massage therapist. He worked in the medical field for fifteen years, When the economy went down, he had to shift his career, and he acquired a commercial driver's license. Eventually, he worked his way to owning his own trucking company, Levad Transportation. He is constantly trying to improve himself, and help others do the same in every way he can.

3. The applicant provides a doctor's letter showing his mental health diagnosis and twenty-nine pages of correspondence to include military awards, service school diplomas, college transcripts, military evaluations, character statements, which show his accomplishments while in the Army and in his civilian career. The full twenty-nine pages are available for the Board to review in the supporting documents.

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

a. He enlisted in the Regular Army on 17 June 1982.

b. Three DA Forms 4187 (Personnel Action) shows his duty status was changed on the following dates:

- Present for Duty (PEDY) to Absent Without Leave (AWOL) – 1 July 1992
- AWOL to Dropped from Rolls (DFR) – 31 July 1992
- DFR to PDT – 12 January 1993

c. DD Form 458 (Charge Sheet) shows court martial charges were preferred against the applicant on 19 January 1994, for violation of Article 86 (AWOL), Uniform Code of Military Justice, in that he did, on or about 1 July 1992, absent himself from his unit and did remain absent until on or about 12 January 1993.

d. On 19 January 1993, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.

e. On 9 February 1993, his immediate commander recommended approval of his request for discharge for the good of the service under the provisions of AR 635-200, chapter 10, with the issuance of an other than honorable discharge certificate.

f. On 23 February 1993, the separation approval authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, chapter 10, with the issuance of an other than honorable discharge certificate. He directed the applicant's reduction to the rank/grade of private/E-1 prior to separation.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the rank/grade of private/E-1 on 15 April 1993 under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial. He completed 10 years, 3 months, and 18 days of net active service with lost time from 1 July 1992 to 11 November 1993. His service was characterized as under other than honorable conditions. He was issued the separation code "KFS" and the reentry code "3". Item 13 (Decorations, Medals, Badges, Citation and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- Army Commendation Medal
- Army Achievement Medal (2nd Oak Leaf Cluster)
- Army Good Conduct Medal (3rd Award)
- NCO Professional Development Ribbon with numeral "2"
- Army Service Ribbon

- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade bar
- Marksman Marksmanship Qualification Badge with Rifle bar (M-16)
- Parachutist Badge
- Air Assault Badge

h. His service records do not contain, and he did not provide evidence of a diagnoses of post-traumatic stress disorder or other mental health conditions.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under other than honorable conditions. He contends he experienced other mental health conditions including PTSD 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 17 June 1982; 2) Court martial charges were preferred against the applicant on 19 January 1994 for going AWOL from 1 July 1992-12 January 1993; 3) On 15 April 1993, the applicant was discharged, Chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical records provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD, while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA predominantly in 2024. The applicant endorsed severe alcohol abuse in July 2024 and was referred to higher level of residential substance abuse treatment. The applicant till

currently has predominantly been involved alcohol abuse treatment at the VA. He currently has not been diagnosed with a service-connected mental health condition including PTSD. However, he has been found to be 100% disabled with service-connected physical conditions since 2023-2024. The applicant did provide a letter from a Clinical Social Worker from the Central Texas VA dated 06 December 2024. The applicant was noted to be engaged in a VA substance abuse treatment program, and he was diagnosed with Depressive Disorder (secondary to traumatic stress in the military), Alcohol Use Disorder, and Provisional Generalized Anxiety Disorder.

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 mental health conditions including PTSD on active service, which mitigates his misconduct. There is evidence the applicant in 2024 has been diagnosed by the VA with Depressive Disorder, which has been attributed to traumatic stress experienced during his active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. He has in 2024 been diagnosed with currently experiencing Depressive Disorder, which has been attributed to traumatic stress in the military, but there is insufficient evidence at this time the applicant was experiencing this condition at the time of his active service. In addition, the applicant is currently not diagnosed with a service-connected mental health condition including PTSD. The applicant did engage in avoidant behavior such as going AWOL, which could be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone 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 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 determined that the applicant's overall record of service prior to the misconduct was honorable and demonstrated dedication to duty. The applicant served faithfully and without incident for a substantial period, and his performance during that time reflected the values and standards expected of a Soldier in the Army. The misconduct that led to the discharge, while serious, occurred late in the term of service and appears to be an isolated event.
2. In weighing the totality of the applicant's service, the Board found that the characterization of discharge as "Under Other Than Honorable Conditions" was unduly harsh and did not accurately reflect the applicant's contributions and commitment prior to the incident. Therefore, the Board recommends that the applicant's discharge be upgraded to "Under Honorable Conditions (General)" to more appropriately recognize the entirety of his military service.
3. The Board minority reviewed and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience which mitigated his misconduct and denied relief.
4. 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> |                      |
|--------------|--------------|--------------|----------------------|
| :XX          | :XX          | :            | GRANT FULL RELIEF    |
| :            | :            | :            | GRANT PARTIAL RELIEF |
| :            | :            | :            | GRANT FORMAL HEARING |
| :            | :            | :XX          | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 15 April 1993 to show an under honorable conditions (General) characterization of service.



**X** //SIGNED//

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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 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. 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 or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "JFS."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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, 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.

6. 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.

7. Title 10, U.S. Code, section 1556, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//