

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009456

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 10 July 2024
- Standard Form 180 (Request Pertaining to Military Record), 15 November 2024
- National Personnel Records Center request details, 20 November 2024
- National Personnel Records Center letter, 22 November 2024
- Legal Counsel letter, undated

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 Number:

- AR20110016044 on 4 October 2011
- AR20220006614 on 8 March 2023

2. The applicant states, he was suffering from post traumatic stress disorder which caused his issues in the military.

3. The applicant provided a Standard Form 180 (Application for Correction of Military Record), 25 November 2024, with supporting documents showing his legal counsel submitted a request to the National Records Center requesting information pertaining to his military service.

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

- a. He enlisted in the Regular Army 30 September 1974.

b. He received nonjudicial punishment on:

- 25 March 1975 - for failure to report to his appointed place of duty on or about
- 17 December 1975 - for absenting himself from his unit from on or about 6 December 1975 and remaining absent until on or about 8 December 1975 and for violating a lawful order by receiving basic allowance for subsistence
- 18 November 1976 - for absenting himself from his unit from on or about 3 November 1976 and remaining absent until on or about 13 November 1976

c. His DD Form 458 (Charge Sheet), 28 June 1977, shows he was charged with absenting himself from his unit from on or about 5 January 1977 and remaining absent until on or about 15 June 1977.

d. On 29 June 1977, the applicant voluntarily requested discharge for the good of the service under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. He understood he could request discharge for the good of the service because charges had been preferred against him under the UCMJ which authorizes the imposition of a bad conduct discharge or dishonorable discharge. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

e. On 5 July 1977, the applicant's immediate and intermediate commanders both recommended approval of his request for discharge with the issuance of an under other than honorable conditions discharge certificate.

f. On 18 July 1977, the separation authority approved the applicant's request for discharge, directed the applicant be reduced to the rank/grade of private/E-1, and he be issued an under other than honorable conditions discharge.

g. His DD Form 214 shows he was discharged on 2 August 1977, under the provisions of AR 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, by reason of administrative discharge- conduct triable by court-martial, in the rank/grade of PVT/E-1. His service was characterized as under other than honorable conditions. He was issued the separation code of "JFS" and the Reentry Code "3 and 3b". He completed 2 years, 4 months, and 11 days of net active service, with 173 days of lost

time. He was authorized the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

5. On 5 March 1990, the Army Discharge Review Board notified the applicant they had determined that he was properly and equitably discharged and his request for a change in the character and/or reason of his discharge had been denied.

6. The ABCMR considered the applicant's request to upgrade his under other than honorable conditions characterization of service in ABCMR Docket Number AR20110016044, on 4 October 2011. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of this case were insufficient as a basis for correction of his records.

7. The ABCMR considered the applicant's request to upgrade his under other than honorable conditions characterization of service in ABCMR Docket Number AR20220006614, on 8 March 2023. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of this case were insufficient as a basis for correction of his records.

8. 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.

9. The Board should consider the applicant's new argument and his overall record in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for an upgrade of his under other than honorable conditions discharge. He asserts he was experiencing PTSD while on active service, which 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 30 September 1974; 2) The applicant accepted nonjudicial punishments between March 1975- November 1976 for failure to report to place of duty, violating an order, and for absenting himself from his unit on three occasions; 3) On 28 June 1977, the applicant was charged with being AWOL from 5 January-15 June 1977; 4) The applicant was discharged on 02 August 1977, Chapter 10-Conduct triable by court-martial with an under other than honorable conditions characterization of service. He completed 2 years, 4 months, and 11 days of net active service with 173 days of lost.

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) was also examined. No additional medical records were provided for review

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

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability for a mental health condition including PTSD.

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, which 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, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while 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 PTSD, while on active service. The applicant did engage in avoidant and erratic behavior, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition which 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 evidence of record shows the applicant's commander preferred charges against him which were punishable by court-martial. The applicant requested and was approved for separation under the provisions of AR 635-200, chapter 10, discharge in lieu of court-martial. Based on the medical review the Board concurred there is insufficient evidence to demonstrate a nexus between his PTSD and a condition or experience that generated his discharge and the characterization of service the applicant received upon separation was appropriate.

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, which mitigates his misconduct.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while on active service. The applicant did engage in avoidant and erratic behavior, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition which mitigates his misconduct, and per Liberal Consideration, his contention is sufficient for the Board's consideration.

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 amendment of the ABCMR decision rendered in Docket Number AR20220006614 on 8 March 2023.

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. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member 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 member, regardless of

whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not be coerced into submitting a request for discharge for the good of the service. The member 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 member may elect to submit a request for discharge for the good of the service. The member 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 member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

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.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

2. Army Regulation 635-5-1 (Separation Program Designators (SPD), in effect at the time, shows the separation code "JFS" was assigned for Soldiers separated under the provisions of Army Regulation 635-200, chapter 10, with the narrative reason of "Administrative Discharge- conduct triable by court-martial." Additionally, the SPD/RE code cross reference table shows the appropriate RE code assigned to the SPD code of "JFS" was "3".

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.

//NOTHING FOLLOWS//