

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20240009692

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Court Documents from Miami-Dade County
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character Reference Letters (2)

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 he needs his discharge status changed on his DD Form 214 to receive medical care. The applicant marked post-traumatic stress disorder on his DD Form 149 as a condition related to his request.
3. The applicant provides:
 - a court document detailing records for the applicant to include, felony, misdemeanor, and non-criminal violations, if any
 - two character letters which describe the applicant as self-motivated, organized, efficient, competent, and outstanding worker with excellent people skills
4. A review of the applicant's service record shows:
 - a. The applicant enlisted in the Regular Army on 25 February 1994.

b. He served in Korea from 26 June 1994 to 25 June 1995.

c. The applicant's record is void of the specific facts and circumstances surrounding his discharge processing.

d. A DA Form 4187 (Personnel Action) shows the applicant was reduced to private first class (PFC), E-3 effective 12 December 1995 as a result of nonjudicial punishment.

e. A DA Form 4126-R (Bar to Reenlistment Certificate), dated 26 January 1996 shows the applicant accepted nonjudicial punishment on 12 December 1992 and listed the following relevant indicators of untrainability or unsuitability:

- 4 November 1995 – dereliction of duty
- 14 November 1995 – suspected theft of another Soldier's personal property
- 25 November 1995 – dereliction of duty and lying to the Company Commander
- 11 January 1996 – substandard appearance for funeral details

f. On 23 May 1996, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he was discharged under the provisions of Chapter 14-12c(2), misconduct, of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). He completed 2 years, 2 months, and 29 days of active service with no lost time.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. On 26 November 2024, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his issue of PTSD. The applicant was provided 30 days to submit supporting documentation with a suspense of 26 December 2024. The applicant has not provided a response to date.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected PTSD on his application as related to his request.

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:

- Applicant enlisted in the Regular Army (RA) on 25 February 1994.
- Applicant served in Korea 26 June 1994 to 25 June 1995.
- Applicant's record is void of the specific facts and circumstances surrounding his discharge processing.
- Applicant was discharged on 23 May 1996, under the provisions of Army Regulation 635-200, Chapter 14 – 12c, with an under other than honorable conditions characterization of service. His DD Form 214 shows he was assigned separation code JKK, his narrative reason for separation listed as "Misconduct", with reentry code 3.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he wants his discharge upgraded in order to receive medical care.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition. On 26 November 2024, a member of the ARBA Case Management Division requested the applicant provide medical documentation in support of his contention of PTSD. No response was provided by the applicant.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD on his application as related to his request, he does not provide any information regarding an index trauma or a rationale for his selection of PTSD on his application. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant selected PTSD on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection of PTSD on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 concurred with the medical advisory official who found there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The Board noted the applicant was separated for receiving nonjudicial punishment for a multitude of misconduct, ranging from dereliction of duty, theft, to substandard appearance for funeral details. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's character references letters but determined that based upon a preponderance of the evidence, the characterization of service the applicant received upon separation was appropriate and denied relief.

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:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD on his application as related to his request, he does not provide any information regarding an index trauma or a rationale for his selection of PTSD on his application. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant selected PTSD on his application as related to his request, he did not provide any medical documentation substantiating any BH diagnosis.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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
: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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

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