

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 April 2025

DOCKET NUMBER: AR20240009695

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552) with self-authored attachment
- U.S. Army Research Institute for the Behavioral and Social Sciences, Research and Development Utilization Report 76-2 (Changes in Black and White Perceptions of The Army's Race Relations/Equal Opportunity Programs – 1972 to 1974), November 1976
- Department of Veterans Affairs (VA) Medical Opinion Disability Benefits Questionnaire, 26 April 2024
- Mental Disorders (Other Than PTSD [post-traumatic stress disorder] and Eating Disorders) Disability Benefits Questionnaire, 26 April 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, in effect, that his military service warrants an honorable discharge. He was in numerous leadership positions during initial training and was an honor graduate of his advance individual training. At his first duty station he was nominated to be the Omnibus for his unit in Europe and attended the Defense Race Relation Institute. At 21 years of age, he was tasked to bridge relationships between his command and African American Troops. He dealt with a lot of pressure in helping other Soldier's issues and it took a mental toll on him. He notes the Army Research Institute report (attached) identified how African American Soldiers were treated. He made a bad

choice 53 years ago and believes he has suffered enough for that choice. He is totally disabled and unemployable and wants a tax exemption and extra benefits that an honorable discharge gives.

3. On his DD Form 149, the applicant indicates other mental health issues is related to his request.

4. He enlisted in the Regular Army on 7 September 1972. He was promoted to the rank/grade of private first class/E-3 effective 21 March 1973.

5. The applicant accepted nonjudicial punishment (NJP) on 26 June 1973, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that on or about 21 May 1973, without authority absent himself from his unit and did so remain absent unit on or about 14 June 1983 in violation of Article 86, UCMJ. His punishment was forfeiture of \$50.00 pay per month for two months.

6. He accepted NJP on 16 January 1974, under the provisions of Article 15, UCMJ, in that on or about 31 December 1973, without authority absent himself from his unit and did so remain until on or about 14 January 1974 in violation of Article 86, UCMJ. His punishment included reduction to the rank/grade of private two/E-2.

7. Special Court-Martial Order Number 31, issued by Headquarters, 194th Armored Brigade, Fort Knox, KY on 10 May 1974, shows he plead not guilty and was found guilty of violating Article 86 of the UCMJ, in that on 15 February 1974, without authority absent himself for his unit and did remain so absent until 20 March 1974.

a. The findings noted the substitution of "15 February 1974" with "19 February 1974" and the plea of "Not Guilty" to "Guilty."

b. He was sentenced to confinement at hard labor for 29 days and to be reduced to the lowest enlisted pay grade. The sentence was adjudged on 23 April 1974.

c. The sentence was approved and ordered to be duly executed, except the portion of hard labor in excess of 15 days is suspended until 22 October 1974.

8. He accepted NJP on 10 June 1974, under the provisions of Article 15, UCMJ, in that on or about 29 May 1974, without authority absent himself from his unit and did so remain until on or about 4 June 1974 in violation of Article 86, UCMJ.

9. Special Court-Martial Order Number 46, issued by Headquarters, 194th Armored Brigade, Fort Knox, KY on 17 June 1974, vacated the suspension of the sentence related to confinement of hard labor in excess of 15 days and it would be duly executed.

10. His immediate commander notified him on 29 October 1974 of his intent to initiate administrative action to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 13-5b(3), by reason of unsuitability. On the same date, he acknowledged receipt of the notification.

11. On 30 October 1974, he consulted with counsel and acknowledged his rights and that he may be separated under the provisions of Army Regulation 635-200, Chapter 13 for unsuitability. He further understood he could encounter prejudice in civilian life if a general discharge was issued and he elected not to submit statements in his own behalf.

12. His immediate commander recommended on 29 October 1974 (sic) that he be separated from the service for unsuitability.

13. On an unspecified date, his immediate commander requested a physical evaluation and a mental health evaluation with the applicant's concurrence.

14. U.S. Army Armor Center Form 1172 (Report of Mental Status Evaluation), 31 October 1974, shows he was evaluated by a medical professional who determined the applicant had no significant mental illness, meet medical retention standards, and was able to participate in separation proceedings.

15. On 14 November 1974, the separation authority approved the recommendation to eliminate him from the service under the provisions of Army Regulation 635-200, Chapter 13-5b(3) for unsuitability. He directed the applicant receive a general discharge certificate.

16. He was discharged on 27 November 1974, under the provisions of Army Regulation 635-200, Chapter 13-5b(3), by reason of unsuitability – apathy, defective attitude or inability to expend effort constructively. His DD Form 214 (Report of Separation from Active Duty) shows his service was characterized as under honorable conditions (general) and he completed 1 year, 9 months, and 5 days of total active service. It further shows he had 168 lost days.

17. He provides:

a. A U.S. Army Research Institute for the Behavioral and Social Sciences, Research and Development Utilization Report 76-2 (Changes in Black and White Perceptions of The Army's Race Relations/Equal Opportunity Programs – 1972 to 1974), November 1976, which discusses an Army-wide survey that determined how black and white Army personnel perceived the nature and severity of the race problem, and how they perceived the various equal opportunity and treatment programs then in existence.

b. VA medical disability benefits questionnaire, dated 26 April 2024 that shows his medical and mental health was evaluated by the VA (see attachment for further details).

18. On 19 March 1987, he petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. The ADRB determined he was properly and equitably discharged and denied his request on 15 December 1987.

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

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable. On his DD Form 149, the applicant indicated that Other Mental Health Issues are related to his request. 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 07 September 1972, 2) he received nonjudicial punishment (NJP) on 26 June 1973 for absenting himself from his unit from on or about 21 May 1973 to on or about 14 June 1983, 3) he received NJP on 16 January 1974 for absenting himself from his unit from on or about 31 December 1973 to on or about 14 January 1974, 4) the applicant was found guilty by a Special Court-Martial on 10 May 1974 of absenting himself from his unit from on or about 15 February 1974 (later substituted to 19 February 1974) to on or about 20 March 1974, 5) he received NJP on 10 June 1974 for absenting himself from his unit from on or about 29 May 1974 to on or about 04 June 1974, 6) His immediate commander notified him on 29 October 1974 of his intent to initiate administrative action to separate him under the provisions of Army Regulation 635-200, Chapter 13-5b(3), by reason of unsuitability, 7) on 31 October 1974, he was psychiatrically cleared for administrative separation, 8) the applicant was discharged on 27 November 1974 under the provisions of AR 635-200, Chapter 13-5b(3), by reason of unsuitability-apathy, defective attitude, or inability to expend effort constructively.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The in-service medical records included as part of his application were reviewed. A DA Form 2496 (Disposition Form) (undated) shows the applicant underwent a physical was determined to meet the physical retention standards IAW AR 40-501,

Chapter 3. A Report of Mental Status Evaluation (MSE) dated 31 October 1974 shows all domains of the MSE as within normal limits (WNL). The provider indicated that he had no significant mental illness, was mentally responsible, was able to distinguish right from wrong, and met retention standards IAW AR 40-501, Chapter 3.

d. On his Enlisted Qualification Record, the Record of Assignments section shows his conduct and efficiency during Basic Combat Training and Advanced Individual Training as 'excellent.'

e. Review of JLV shows the applicant is 100% service-connected through the VA for various conditions, to include 70% for Major Depressive Disorder (MDD). A VA Compensation and Pension (C&P) examination signed on 12 October 2021 shows the applicant was diagnosed with Depressive Disorder Due to Another Medical Condition and in the comments section noted Plantar Fasciitis, Deltoid Ligament Sprain. The provider opined that his diagnosis of Depressive Disorder Due to Left Plantar Fasciitis, Left Deltoid Ligament Sprain with Major Depressive-Like Episode is more likely than not a continuation of, related to, secondary to, or aggravated by his military service-connected condition of Left Plantar Fasciitis, Left Deltoid Ligament Sprain. A subsequent VA C&P examination and associated Medical Opinion Disability Benefits Questionnaire (DBQ) dated 26 April 2024 shows his diagnosis of Depressive Disorder due to Another Medical Condition was reaffirmed. In the comments section, the following medical conditions were listed: Right Knee Osteoarthritis, Left Knee Osteoarthritis, Right Lower Extremity Radiculopathy Associated With Lumbar, Spine Degenerative Arthritis, Left Lower Extremity Radiculopathy Associated With Lumbar Spine Degenerative Arthritis, Right Hip Osteoarthritis (Impairment Of Thigh), Left Ankle Deltoid Ligament Sprain, Chronic/Recurrent With Degenerative Arthritis, Right Hip Osteoarthritis (Limitation Of Extension), Right Hip Osteoarthritis (Limitation Of Flexion). The provider documented that his diagnosis of Depressive Disorder Due to Another Medical Condition is at least as likely as not due to service-connected disabilities.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and service-connected through the VA with Major Depressive Disorder, which is a potentially mitigating condition. This Advisor would contend that the applicant's discharge due to Unsuitability is mitigated by his diagnosis of MDD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA for Major Depressive Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA for Major Depressive Disorder. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's in-service records were void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with Major Depressive Disorder. As there is an association between changes in mood/attitude, motivation, decreased energy levels, and depression, there is a nexus between his discharge due to Unsuitability- apathy, defective attitude, or inability to expend effort constructively and his diagnosis of MDD. As such, BH mitigation is supported.

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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service.

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. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, The Board concluded there was insufficient evidence of an error or injustice warranting an upgrade to the applicant's characterization of service.

3. The Board noted the findings of mitigation in the medical review; however, the Board concluded the pattern of misconduct outweighed any mitigation. The Board found a General Discharge was equitable based upon the totality of the facts outlined in the 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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set forth the requirements and procedures for administrative 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. Chapter 13 established policy, procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. It provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to spend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge

was issued as determined by the separation authority based upon the individual's entire record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or 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. 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 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.

//NOTHING FOLLOWS//