

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240009968

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records that were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100025184 on 15 March 2011.
2. The applicant states, in effect:
  - He was absent without leave (AWOL) for personal reasons; his wife was pregnant, and she did not want to be alone during her pregnancy and at the birth of their child
  - His wife sabotaged his opportunity to leave when he was supposed to, in that she hid his wallet, and he was unable to buy a plane ticket to his unit
  - His wife was mentally and emotionally abusive, leading him to have anxiety and stress; (on his application, the applicant has checked the block for "Other Mental Health" issues; he did not provide any supporting documentation)
  - The applicant notes he submitted an application to the Board in 2010, but no decision was made
3. A review of the applicant's service record shows the following:
  - On 27 June 1980, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty 11H (Heavy Anti-Armor Weapons Infantryman), orders assigned him to an infantry regiment in Hawaii, and he arrived at his new unit, on 10 October 1980
  - Effective 27 November 1981, the applicant's leadership promoted him to specialist four (SP4)/E-4; on 6 June 1983, Permanent Orders (PO) awarded him the Army Good Conduct Medal (1st Award)

- On 22 July 1983, PO awarded the applicant the Army Achievement Medal (1st Award) for exceptionally meritorious achievement; on 3 October 1983, he immediately reenlisted for 6 years; on 7 October 1983, reassignment orders transferred him to Fort Hood, TX (now renamed Fort Cavazos)
- In December 1984, he received reassignment instructions for Germany, with a reporting date in February 1985; on 16 January 1985, PO awarded the applicant the Army Achievement Medal (2nd Award) for meritorious service
- On or about 27 February 1985, the applicant's unit in Germany reported him as AWOL; on 10 April 1985, military authority apprehended the applicant and returned him to military control; orders reassigned him to the Personnel Control Facility (PCF) at Fort Sill, OK
- On 15 April 1985, the PCF preferred court-martial charges against the applicant for having been AWOL from 27 February to 10 April 1985 (42 days)
- On 15 April 1985, after consulting with counsel, the applicant requested separation under the provisions of chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
  - The applicant stated he was making this request of his own free will, and he admitted he was guilty of the charge preferred against him
  - He elected not to submit to submit statements in his own behalf
- The PCF placed the applicant on excess leave, and he departed Fort Sill, on or about 15 April 1985
- On 26 April 1985, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; the separation authority additionally ordered the applicant's reduction to the lowest enlisted grade
- On 15 May 1985, the Army discharged the applicant under other than honorable conditions; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 9 months, and 6 days of creditable active duty service; the report additionally reflects the following:
  - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon, Overseas Service Ribbon, Noncommissioned Officer Professional Development Ribbon, Army Good Conduct Medal (1st Award), Army Achievement Medal (1st Award), Driver and Mechanic Badge with Driver Component Bar, and two Marksmanship Qualification Badges
  - Item 25 (Separation Authority) – AR 635-200, chapter 10
  - Item 26 (Separation Code) – "KFS"
  - Item 27 (Reenlistment (RE) Code) – RE-3B

- Item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial
- Item 29 (Dates of Time Lost During this Period) – 19850227-19850409
- On 20 September 2010, the applicant petitioned the ABCMR, requesting an upgraded character of service; he argued he served proudly for years, and that, as an enlisted Soldier, he should not be judged by one mistake
- On 15 March 2011, the Board voted to deny relief

#### 4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions as a result of alleged spousal abuse that 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 27 June 1980; 2) On 15 April 1985, court-martial charges were preferred against the applicant for going AWOL from 27 February to 10 April 1985 (42 days); 3) On 15 May 1985, 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. He completed 4 years, 9 months, and 6 days of net active service with lost time between 27 February 1985 and 09 April 1985. 4) The applicant previously applied to the ABCMR for discharge upgrade on 15 March 2011 and his discharge was determined to be fair 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) was also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions that mitigate his misconduct. There is insufficient evidence that the applicant officially reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed by the VA with service-connected mental health condition, nor does he receive any service-connected disability for a mental health condition.

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 diagnosed 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 as a result of alleged spousal abuse, 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 as a result of alleged spousal abuse.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions while on active service. The applicant did engage in avoidant behavior such as going AWOL for an extended period of time, which could be a natural sequelae to certain mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. The applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone 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 request, supporting documents, evidence in the records, medical advisor's review 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 applicant was charged with being absent without leave 27 February to 10 April 1985 (42 days), punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence, the fact that he blames others for his own actions and did not accept responsibility, was apprehended by authorities instead of turning himself in. The Board concurred, with the medical advisor's review finding that there is insufficient evidence to support the applicant had a diagnosed mental health condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the

characterization of service the applicant received upon separation was not in error or unjust.

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 misconduct? Yes, the applicant asserts he experienced mental health conditions as a result of alleged spousal abuse, 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 as a result of alleged spousal abuse.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions while on active service. The applicant did engage in avoidant behavior such as going AWOL for an extended period of time, which could be a natural sequelae to certain mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. The applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:            :            :            GRANT FULL RELIEF

:            :            :            GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

█           █           █            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 AR20100025184 on 15 March 2011.

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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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Authority). Separation under this paragraph was the Secretary of the Army's prerogative. The separation of any Soldier of the Army under this authority was based on Secretary of the Army determination that separation was in the best interests of the Army.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

3. MCM, in effect at the time, showed punitive discharges were among the maximum punishments for violations of UCMJ Article 86 (AWOL for more than 30 days).

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 6-11 (Approved for Discharge from Service Under Other than Honorable Conditions), that when a separation authority determined that a Soldier was to be discharged from the service under other than honorable conditions, the Soldier was to be reduced to the lowest enlisted grade. Board action was not required for this reduction.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Code) and 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

6. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have the narrative reason for separation: "For the Good of the Service – In Lieu of Court-Martial" entered on their DD Form 214.

7. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and Army Reserve enlistment program.

a. Table 3-6 (Armed Forces RE Codes, Regular Army RE Codes) included the following list of the RE codes:

- RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria were met
- RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived
- RE-3B – Soldiers with lost time during their last period of service required a waiver to reenter the Armed Forces.

b. Table 4-1 (Waivable Moral and Administrative Disqualifications). Line A (Disqualification) states prior service applicants with lost time during their last period of service required a waiver to reenter the Regular Army.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

9. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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 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 misconduct that led to the discharge.

10. 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, BCM/NRs 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.

11. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//