

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010082

APPLICANT REQUESTS:

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

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- VA Form 21-4138 (Statement in Support of Claim), dated 25 July 2023, made in connection with his claim for benefits to the Department of Veterans Affairs (VA)
- VA Rating Decision, dated 8 May 2024, which shows service connection for treatment purposes only for bilateral hearing loss and tinnitus
- VA Rating Decision, dated 14 May 2024, which shows service connection for treatment purposes only for post-traumatic stress disorder (PTSD) and cannabis use disorder

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 was overwhelmed with emotions during his period of being absent without leave (AWOL), which as he understands now may have been attributed to PTSD. PTSD symptoms have hampered his ability to sustain full time employment. An upgrade will allow him to gain VA disability which will help him support himself financially. The applicant explains in his 2-page statement, which is available for the Board's review in the supporting documents:

- His father was an Army veteran

- Deployment to Iraq in support of Desert Storm
- PTSD
- Stationed at Fort Hood, TX
- Facing a potential court-martial

3. A review of the applicant's service records show:

a. He enlisted in the Army National Guard (ARNG) on 11 March 1987. He was discharged under honorable conditions and transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training) on 2 July 1990.

b. On 14 January 1991, he was ordered to active duty in support of Operation Desert Shield/Desert Storm. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released on 6 July 1991 and transferred to the USAR Control Group (Reinforcement). This form also shows in:

- Item 12f (Foreign Service): 4 months, 22 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, National Defense Service Ribbon, Southwest Asia Service Medal with one bronze service star, Kuwait Liberation Medal, and the Sharpshooter Marksmanship Qualification Badge (M-16)
- Item 18 (Remarks): Service in Southwest Asia from 27 January 1991 to 18 June 1991.

c. He enlisted in the Regular Army on 6 November 1992.

d. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 2 December 1993 for being AWOL from on or about 12 October 1993 to on or about 29 November 1993.

e. On 2 December 1993, he requested separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of trial by court-martial.

f. On 24 January 1994, the chain of command recommended approval, with an under other than honorable conditions characterization of service.

g. On 31 January 1994, the separation authority approved the discharge, directed he be reduced to the lowest enlisted grade, and issued an under other than honorable conditions discharge.

h. Accordingly, he was discharged under other than honorable conditions on

11 March 1994. His DD Form 214 shows he completed 1 year, 2 months, and 19 days of net active service this period. He had lost time from 12 October 1993 to 28 November 1993.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within the Board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

6. 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 PTSD 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) He enlisted in the Army National Guard (ARNG) on 11 March 1987; 2) On 14 January 1991, the applicant was ordered to active duty in support of Operation Desert Shield/Desert Storm. His DD Form 214 shows he was honorably released on 6 July 1991; 3) The applicant then enlisted in the Regular Army on 6 November 1992; 4) Court-martial charges were preferred against the applicant on 2 December 1993 for being AWOL from 12 October-29 November 1993; 5) On 11 March 1994, the applicant was discharged, Chapter 10- in lieu of trial by court-martial with an under other than honorable conditions characterization of service.

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

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

d. A review of JLV provided evidence the applicant began to engage with the VA in 2001. In 2010, he was diagnosed with PTSD related to his combat deployment. Later in 2024, the applicant underwent a Compensation and Pension evaluation, and he was diagnosed with service-connected PTSD for treatment purposed only. He is currently still involved in behavioral health treatment at the VA.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL, which can be an avoidant behavior and a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

#### 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 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 absenting himself from his unit from 12 October 1993 to 29 November 1993, 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. However, the Board was convinced by the compelling evidence submitted by the applicant that his actions were due to documented PTSD due to his deployment in Operation Desert Storm in Iraq and warranted an upgrade to a general discharge. In addition, the Board concurred with the medical advisory opinion that his actions were mitigating and warranted consideration for an upgrade to his characterization of service. Therefore, the Board determined an upgrade to under honorable conditions (General) was warranted and granted 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 asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL, which can be an avoidant behavior and a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

The Board concluded there was sufficient 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
:	:	:	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 11 March 1994 to show a general discharge characterization of service.

8/13/2025

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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 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.

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.

6. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

//NOTHING FOLLOWS//