

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240010134

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 13 July 2024
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 1 March 1962
- Applicant's Medical Data Review, 28 January 2023

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 provided five pages of his medical data review showing he was diagnosed with the following:

- Tinnitus
- Vertigo
- Bilateral sensorineural hearing loss
- Allergic rhinitis
- Pansinusitis
- Chronic cervical spine
- Degenerative joint disease shoulder, elbows, and wrists
- Chronic lower back pain
- Lumbar strain
- Degenerative joint disease in hips, knees, and feet
- Peptic ulcer disease

- Chronic gastritis
- Major depressive disorder
- Anxiety disorder
- Chronic sleep impairment
- Memory disorder
- unemployability

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

a. He was inducted into the Army of the United States on 7 December 1959.

b. Headquarters 326th Battalion (Airborne Division), Special Court-Martial Order Number 1, 5 January 1961, shows the applicant was convicted by a special court-martial for violation of Article 86 (Absent Without Leave) Uniform Code of Military Justice (UCMJ), in that he did, on or about 21 November 1960, without authority, absent himself from his unit, and did remain so absent until on or about 26 December 1960.

(1) His punishment, adjudged on 5 January 1961, included confinement at hard labor for two months, and forfeiture of \$25.00 per month for two months, and reduction to the rank/grade of recruit/E-1.

(2) On 5 January 1961, only so much of the sentence as provides for one month of confinement, forfeiture of \$25.00 for two months, and reduction to the rank/grade of recruit/E-1 was approved and duly executed. The portion of the sentence pertaining to confinement for two months was suspended for one month, unless sooner vacated, the sentence would remitted.

c. Headquarters 326th Battalion (Airborne Division), Special Court-Martial Order Number 4, 19 January 1961, shows the unexecuted portion of the sentence of confinement at hard labor for one month, forfeiture of \$25.00 for two months, and reduction to the rank/grade of recruit/E-1 was remitted.

d. Headquarters, Fort Buchanan, Special Court-Martial Order Number 40, 27 December 1961, applicant was convicted by a special court-martial for two specifications of violation of Article 86, UCMJ, in that he did, without authority, absent himself from his unit from on or about 1 October 1961 to on or about 14 November 1961 and from on or about 14 November 1961 to on or about 16 November 1961.

(1) His punishment, adjudged on 12 December 1961, included confinement at hard labor for six months and forfeiture of \$55.00 per month for six months, and reduction to the rank/grade of recruit/E-1.

(2) On 27 December 1961, the sentence was approved and duly executed.

e. On 18 January 1961, the applicant underwent a psychiatric evaluation for the purpose of separation. The examining official determined the applicant was able to distinguish between right and wrong and found no evidence of psychosis.

f. On 6 February 1961, the applicant's immediate commander recommended he be eliminated from service under the provisions of Army Regulation (AR) 635-208 (Personnel Separations-Discharge-Undesirable Habits and Traits of Character), paragraph 3a.

g. On 8 February 1961, the applicant acknowledged he had been counseled and advised for the basis for the action recommended against him. He declined the opportunity to request counsel and waived his right to have his case heard by a board of officers. Lastly, he elected to not submit a statement on his own behalf.

h. On 9 February 1961, both of his intermediate commanders recommended approval of the recommended discharge under the provisions of AR 635-208.

i. On 21 February 1962, the separation authority approved the recommended discharge, under the provisions of AR 635-208 and directed the applicant be issued an undesirable discharge certificate.

j. On 1 March 1962, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any medical issues and found the applicant was qualified for separation.

k. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 1 March 1972 under the provisions of Army Regulation 635-208. He completed 1 year, 9 months, and 7 days of net active service with 168 days. His service was characterized as under other than honorable conditions. He was issued the separation program number "28B". Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was authorized the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

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

5. AR 635-208, in effect at the time, set forth the basic authority for the separation of enlisted personnel for unfitness.

6. 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.

7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant was inducted into the Regular Army on 7 December 1959.
- Special Court-Martial Order Number 1, 5 January 1961, shows the applicant was convicted by a special court-martial for violation of Article 86 (Absent Without Leave) from 21 November 1960 to 26 December 1960.
- Special Court-Martial Order Number 40, 27 December 1961, applicant was convicted by a special court-martial for two specifications of being from 1 October 1961 to 14 November 1961 and from 14 November 1961 to 16 November 1961.
- On 6 February 1961, the applicant's immediate commander recommended he be eliminated from service under the provisions of Army Regulation (AR) 635-208 (Personnel Separations-Discharge-Undesirable Habits and Traits of Character), paragraph 3a.
- The applicant was discharged on 1 March 1972 and completed 1 year, 9 months, and 7 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant did not include a narrative for justification of the misconduct or rationale for upgrade to his discharge. He indicated PTSD as an issue or condition related to his request. A Medical Data Review conducted on 28 January 2023 showed the applicant reported mental health related symptoms and was diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder, and Memory Disorder NOS (not otherwise specified). A medication list showed two anxiolytics and an antidepressant. A Certificate from 18 January 1962 showed that the applicant was evaluated by a mental health provider and determined to have no diagnosis, the ability to distinguish right from wrong, and no evidence of psychosis. The document also stated he had no disqualifying physical or mental defects sufficient to warrant separation under the provisions of AR 635-40A and that there were no psychiatric contraindications to administrative separation. A Report of Medical Examination dated 1 March 1962 showed no indication of any mental health symptoms, and the applicant was determined to be qualified for

separation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Records from his time in service showed he was evaluated by a mental health provider and determined to have no diagnosis. The application included documentation from 2023, which showed diagnoses of Generalized Anxiety Disorder, Major Depressive Disorder, and Memory Disorder NOS.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed the applicant was evaluated by medical and mental health providers as part of his discharge and there was no indication of any mental health symptoms or diagnoses. In 2023 he was diagnosed with a mental health condition, but there is insufficient evidence of his condition being related to his time in the service. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. Based upon the pattern of misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, 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
: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 (AR) 635-208, in effect at the time, set forth the basic authority for the separation of enlisted personnel for unfitness. The regulation provided for the discharge of individuals by reason of unfitness with an undesirable discharge when it had been determined that an individual's military record was characterized by one of more of the following: frequent incidents of a discreditable nature with civil or military authorities; sexual perversion; drug addiction or the unauthorized use or possession of habit forming narcotic drugs or marijuana; an established pattern for shirking; or an established pattern showing dishonorable failure to pay just debts.
3. AR 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

4. 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.

5. 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 (BCM/NR) 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//