

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010177

APPLICANT REQUESTS:

- upgrade of his previously upgraded characterization of service from under honorable conditions (general) to honorable
- award of two years and two weeks backpay

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

- DD Form 149 (Application for Correction of Military Record), 26 August 2023
- legal brief
- Exhibit 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 October 1982
- Exhibit 2 – self-authored statement
- Exhibit 3 – DD Form 214, 10 October 1982
- Exhibit 4 – ABCMR Case AR20190010961, DATE
- Exhibit 5 – Chronological Record of Medical Care, 27 July 1982
- Exhibit 6 – compassionate reassignment request
- Exhibit 7 – medical documents
- Exhibit 8 – Follow My Health documents
- Exhibit 9 – character reference, from K.A., 21 January 2023
- Exhibit 10 – Department of Veterans Affairs (VA) page 2
- Exhibit 11 – Department of VA decision
- Exhibit 12 – Traumatic Brain Injury (TBI) and Related Antisocial Behavioral Outcomes: A Systematic Review article
- Exhibit 13 – Department of VA Board decision, 22 December 2022
- Exhibit 14 – Report of Medical History
- Exhibit 15 – Chronological Record of Medical Care, 24 February 1981
- Exhibit 16 – Chronological Record of Medical Care, 26 May 1982
- Exhibit 17 – Report of Medical History
- Exhibit 18 – Department of VA health summary

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190010961 on 1 March 2022.

2. The applicant provides a 6-page statement, available for the Board's review in its entirety in the supporting evidence file. Below is a summary of his self-authored statement:

a. Early in his service he experienced traumatic events of being shot at by another Soldier at the firing range and walking on a live firing range while training where a round went off behind him and the others. He joined the Fort Hood boxing team and noticed he began to experience changes in his behavior, wherein he believed he was losing his mind. Another event which he experienced was being chased by a bull hog while overseas, knowing of their fatal attacks.

b. While in Germany, while heavily drinking with others, he passed out and did not remember anything; however, military police approached him and he was grabbed and handcuffed. He went to legal and was informed he was getting court-martialed for stealing money and stealing a female ration card and female identification card or he could request to be discharged.

c. After his discharge, he began drinking and using drugs. He became suicidal and even had a few attempts. He has lived life with anxiety, fear, anger, and depression, as well as headaches and memory loss. He has been suffering with Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI).

d. After treatment with the Department of VA, he receives a 90% total and permanent disability for his service-connected disabilities. He believes he had his opportunity to serve taken away from him because of the lack of treatments or a program for his trauma. He is requesting an honorable discharge along with back pay, equaling two years and two weeks from the time taken away from him.

3. The applicant's counsel provides a 10-page legal brief, available for the Board's review in its entirety. Below is a summary:

a. Counsel argues the applicant's discharge being inequitable because of his mental health conditions being a major contributing factor to the misconduct which led to his discharge. Additionally arguing the applicant's conduct was otherwise exemplary and merits a full upgrade to an honorable discharge. Counsel elaborates the following areas:

- His diagnosed PTSD and TBI may mitigate the misconduct that led to his discharge, evidenced by post-service diagnoses by civilian providers

- His head injuries were suffered during service not during his childhood, evidenced by post service diagnoses, service treatment records, and statement from K.A. coach of the Fort Hood Boxing Team
- His mental health conditions were major contributing factors in the events that led to his discharge and thus mitigated his misconduct
- His mental health conditions outweigh his discharge

b. Counsel asserts the applicant's honor and dignity were lost due to the trauma he endured while serving. Counsel further asserts upgrading his discharge to honorable as well as backpay of two years and two weeks would restore that honor and dignity which was lost.

4. A review of the applicant's service record shows the following:

a. He enlisted in the Regular Army on 29 September 1980, for 4-year period.

b. He served in Germany from 11 June 1982 through 6 August 1982.

c. On 2 February 1982, he requested compassionate reassignment due to his mother's illness and her financial problems. He requested the reassignment in order to be closer to his mother who he needed to ensure was taken care of. His commander recommended approval of this request on 22 April 1982.

d. On 8 July 1982, court-martial charges were preferred against the applicant in Germany. His DD Form 458 (Charge Sheet) shows he was charged with the following:

- on or about 19 June 1982, resisting being lawfully apprehended
- on or about 19 June 1982, stealing a purse and United States currency of about \$12.00
- on or about 19 June 1982, steal a military identification card, DA Form 2A and a ration card, AE Form 1150, military property of the United States
- on or about, 19 June 1982, being drunk and disorderly

e. Following consultation with legal counsel on 13 July 1982, he requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). In his request for discharge, he indicated that:

- he was making this request of his own free will and had not been subjected to any coercion by any person

- he understood that by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge
- he acknowledged he understood that if the discharge request was approved, he could be deprived of many or all Army benefits, that he could be ineligible for many or all benefits administered by the VA, and that he could be deprived of his rights and benefits as a veteran under both Federal and State law
- he did not elect to submit a statement in his own behalf

f. His immediate and intermediate commander's recommended approval of his request for discharge with issuance of an under other than honorable conditions (UOTHC) discharge.

g. On 20 July 1982, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial and directed that he be reduced to private/E-1 and issued an UOTHC discharge.

h. Accordingly, he was discharged on 10 August 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 10 (in lieu of trial by court-martial) of AR 635-200 with an UOTHC characterization of service. He completed 1 year, 10 months, and 12 days of net active service.

i. On 29 March 1983, the Army Discharge Review Board found, he was properly and equitably discharged and denied his appeal for upgrade of his discharge.

j. In his previous request (AR20290010961) on 1 March 2022, after reviewing the application and all supporting documents, the Board determined partial relief was warranted and concluded there was sufficient evidence warranting upgrading his characterization of service to General, Under Honorable Conditions.

k. He was reissued a DD Form 214 showing administrative correction of his characterization of service to General, Under Honorable Conditions.

5. The applicant and his counsel additionally provide:

a. His medical records ranging from 1982 to 2022 showing medical information to include but not limited to enlistment medical care, diagnosis of overactive bladder, medications taken, allergies, remarks from providers, and urology reports.

b. His compassionate assignment request to include a letter written in 1982 from his pastor requesting his compassionate reassignment request would be approved to have him at home with his family.

c. One character reference statement from his boxing coach K.A., who summarizes the applicant's time serving for the Fort Hood boxing. K.A. states the applicant was one of his best fighters who never gave up, when the applicant began competitions, thou he noticed he began to struggle in the boxing ring with tiredness and have constant nose bleeds. He recalls seeing the applicant getting hit in the ribs, chest, and head, knocked down various times, to which declined his performance.

d. Department of the VA decision documents showing he has service connections for compensation from the VA to include major depressive disorder (MDD), PTSD, and TBI. Additional documentation from the VA showing his remanded entitlement to service-connected urinary disability.

e. A Traumatic Brain Injury and Related Antisocial Behavioral Outcomes: A Systematic Review article explaining higher level of aggression and antisocial behavior being found in a period following head trauma.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### 7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an additional upgrade of his previously upgraded under honorable conditions (general) discharge. He reported that TBI, and other mental health conditions including PTSD 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 29 September 1980; 2) Court-martial charges were preferred against him on 8 July 1982 of: A) Resisting arrest, B) stealing a purse and \$12, stealing military ID cards, forms, and property, and finally C) for being drunk and disorderly; 3) The applicant was discharged on 10 August 1982, Chapter 10, administrative discharge conduct triable by court-martial. He completed 1 year, 10 months, and 12 days of net active service. His service was originally characterized as under other than honorable conditions. 4) Subsequently, on 29 March 1983, after seeking relief from the ADRB, they found he was properly and equitably discharged, denying his first appeal. However, on 1 March 2022, the ADRB determined partial relief was warranted to change his characterization of service to Under Honorable Conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and civilian medical records provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant reported that TBI resulting from boxing and mental health conditions including PTSD due to a soldier shooting his weapon at his unit during training, were related to his request. The applicant was evaluated on 22 July 1982 and found to be in good mental and physical health by a military medical provider, though the applicant indicated the presence of a prior TBI with no additional detail provided. There is insufficient evidence that the applicant was diagnosed with PTSD or with any other mental health diagnoses during his time in active service. Additionally, there is insufficient evidence that the applicant was formerly diagnosed with or treated for TBI during his time in service.

d. A review of JLV revealed that the applicant began his connection to VA medical and mental health services beginning on 05 May 2016 that has continued until the present day primarily for the diagnoses of: PTSD, TBI, alcohol abuse, stimulant use disorder (cocaine), unspecified neurocognitive disorder, and depression. He provided documentation of his connection to the military boxing program through his former coach, asserting the applicant's participation and injuries. The applicant's VA medical providers also documented the applicant's report of boxing-related TBIs during his time in service. He is currently 90% VA service connected for various medical issues and includes a 70% VA service connection for major depressive disorder. The applicant provided hardcopy medical records addressing physical health concerns and the connection between his VA claimed urinary incontinence and PTSD by his civilian physician.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that may partially mitigate 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 a TBI through boxing and mental health conditions including PTSD and major depressive disorder due to experiences during training, and was documented by his VA and civilian providers, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced TBI, and mental health conditions including PTSD while on active service. The applicant reported that he was a boxer during his time in service and had a fellow soldier shot towards him and other soldiers that contributed to his experience of these conditions. The applicant reported a TBI on a medical evaluation prior to discharge and receives VA disability and treatment for major depressive disorder associated with his time in military service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is evidence that the applicant has been diagnosed through the VA with a mental health condition of major depressive disorder, PTSD and TBI that occurred during military service. The applicant did engage in avoidant or self-medicating behavior such as engaging in alcohol abuse and drunk and disorderly conduct, which can be a natural sequelae of TBI and some mental health conditions, including PTSD and major depressive disorder. Conversely, there is no nexus between the applicant's reported TBI, major depressive disorder, and PTSD and the applicant's misconduct of theft and resisting arrest in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of these conditions; 2) These conditions do not impact one's ability to distinguish right from wrong and act in accordance with the right. However, per Liberal Consideration, his contention alone is sufficient for the Boards consideration.

#### 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, 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 and determined relief was not warranted.

a. Characterization Upgrade to Honorable: Deny. The applicant was pending charges for a court-martial for resisting being lawfully apprehended, stealing a purse and United States currency of about \$12.00, stealing a military identification card, DA Form 2A and a ration card, and being drunk and disorderly, 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 multiple misconduct and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his

misconduct. Based on a preponderance of the evidence, and the fact that the applicant had his characterization of service already upgraded from Under Other Than Honorable to General in a previous case, the Board concluded that no further relief was warranted.

b. Two years and 2 weeks of back pay. Deny. The Board determined there were no errors or injustices to warrant the applicant's 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 misconduct? Yes, the applicant asserts he experienced a TBI through boxing and mental health conditions including PTSD and major depressive disorder due to experiences during training, and was documented by his VA and civilian providers, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced TBI, and mental health conditions including PTSD while on active service. The applicant reported that he was a boxer during his time in service and had a fellow soldier shot towards him and other soldiers that contributed to his experience of these conditions. The applicant reported a TBI on a medical evaluation prior to discharge and receives VA disability and treatment for major depressive disorder associated with his time in military service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is evidence that the applicant has been diagnosed through the VA with a mental health condition of major depressive disorder, PTSD and TBI that occurred during military service. The applicant did engage in avoidant or self-medicating behavior such as engaging in alcohol abuse and drunk and disorderly conduct, which can be a natural sequelae of TBI and some mental health conditions, including PTSD and major depressive disorder. Conversely, there is no nexus between the applicant's reported TBI, major depressive disorder, and PTSD and the applicant's misconduct of theft and resisting arrest in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of these conditions; 2) These conditions do not impact one's ability to distinguish right from wrong and act in accordance with the right. However, per Liberal Consideration, his contention alone is sufficient for the Boards consideration.

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 AR20190010961 on 1 March 2022.

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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, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

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 DRB and BCM/NR when considering requests by Veterans for modification of their discharges due in whole or in part 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 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.

5. 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.

//NOTHING FOLLOWS//