

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240010190

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 149 (Application for Correction of Military Record), 11 May 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 he was told his other than honorable conditions characterization of service would be upgraded six months after his discharge from service.
3. A review of his record shows:
 - a. He enlisted in the Regular Army on 22 February 1996.
 - b. On 21 August 1996, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 3 August 1995, he did, physically control a vehicle while drunk. His punishment included forfeiture of \$427.00 per month for a period of two months and 45 days extra duty and 45 days restriction.
 - c. The DA Form 458 (Charge Sheet), 5 April 1998, shows the following charges were preferred against the applicant:
 - (1) Charge 1: violation of article 111 (drunken and reckless operation of a vehicle), UCMJ. Specification: the applicant did, on or about 13 February 1998, physically control a vehicle while drunk.

(2) Charge 2: violation of article 112a (wrongful use, possession, etc, of controlled substances), UCMJ. Specification: the applicant did, between on or about 25 February 1998 and 3 March 1998, wrongfully use a controlled substance, cocaine.

(3) Charge 3: violation of article 134 (General), UCMJ. Specification: the applicant, being indebted to S_____ E_____ in the sum of \$1,640.10 for the purchase of car stereo equipment and/or car stereo accessories, which amount became due and payable on or about 6 December 1997, dishonorably fail to pay said debt.

(4) The preferred charges were referred for trial to a summary court-martial on 14 April 1998 (Note: the results of the summary court-martial trial are not available for the Board to view).

d. On 27 April 1998, the applicant was command referred for a mental status evaluation for the purpose of separation. The examining official noted the applicant's mental status was within normal limits, he had the mental compacity to understand and separation proceedings, he was mentally responsible, and was cleared for any action deemed appropriate by his command.

e. His duty status was changed on the following dates:

- Present for Duty (PDY) to Absent Without Leave (AWOL) – 22 May 1998
- AWOL to PDY – 19 June 1998

f. On 23 June 1998, the applicant's immediate commander notified the applicant he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 14-12c, for commission of a serious offense. The commander informed the applicant he was recommending he receive an under other than honorable discharge. The commander listed the following reasons for the proposed action:

- AWOL from 22 May 1998 to 19 June 1998
- On 22 April 1996 (should read 22 April 1998), the applicant was convicted by a summary court-martial for drug use – cocaine
- On 3 August 1997, (should read 3 August 1996) the applicant had a driving while intoxicated (DWI) with personal injuries

g. On the same day, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense, under the provisions of AR 635-200, chapter 14-12c, and its effects, of the rights available to him; and the effect of any action he took in waiving his rights.

(1) He waived his right to have his case considered by an administrative separation board.

(2) He waived his right for a personal appearance before administrative separation board.

(3) He elected to submit statements on his own behalf (not in evidence).

(4) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(5) He further understood that, if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge will be upgraded.

(6) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

h. On an unspecified date, his company level commander recommended he separated under the provisions of AR 635-200, chapter 14-12c, with a under other than honorable discharge. The company level commander noted the applicant had no potential for useful service under conditions of full mobilization as evidenced by his military behavior, record, and performance.

i. On 23 June 1998, his battalion level commander recommended approval of the request for discharge under the provisions of AR 625-200, chapter 14-12c, with an under other than honorable discharge. His battalion level commander noted: the applicant clearly has a drug problem and is hence a danger to other Soldiers. He has received a field grade NJP for DWI and a summary court-martial for drug abuse, DWI, and failure to pay debts. His well established pattern of serious misconduct indicated that he has no desire to be an effective soldier.

j. On 8 July 1998, the separation authority approved the request for discharge, under the provisions of AR 635-200, chapter 14-12c, with an other than honorable discharge certificate.

k. The applicant was discharged on 24 July 1998. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years, 4 months and 5 days of net active service with lost

time from 22 May 1998 to 18 June 1998. He was assigned the separation code of JKK and the RE code of 4.

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. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.

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. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions characterization of service. He contends he experienced mental health conditions including PTSD which 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 22 February 1996; 2) On 21 August 1996, the applicant accepted nonjudicial punishment (NJP) for driving a motor vehicle intoxicated; 3) On 5 April 1998, the applicant was charged with driving a vehicle intoxicated, using cocaine, and being indebted to someone for the purchase of a car stereo. The preferred charges were referred for trial to a summary court-martial on 14 April 1988. The results of the summary court-martial trial are not available for review; 4) The applicant was found AWOL from 22 May-19 June 1998; 5) The applicant was discharged on 24 July 1998, Chapter 14-12c(2), by reason of misconduct. His service was characterized as under other than honorable conditions.

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) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. He also contends he was deployed to Bosnia but, there was insufficient evidence the applicant was deployed to Bosnia in his service records. There is also insufficient evidence the applicant was diagnosed with a mental health disorder, including PTSD while on active service. On 27 April 1998, the applicant underwent a Mental Status Exam as part of his administrative separation proceedings. The applicant was not diagnosed with a mental health

condition and was cleared from a psychiatric perspective for any administrative action deemed appropriate by command.

d. A review of JLV provided evidence the applicant has intermittently contacted the Veteran's Crisis Line starting in 2019 till 2023 and been provided assistance for homelessness. He underwent a Compensation and Pension evaluation for PTSD and physical concerns in May 2019. The applicant reported being deployed to Bosnia and experiencing a potentially traumatic event, which he described resulted in anxiety, depression, substance abuse, and PTSD. The applicant was diagnosed with PTSD due to his report of being deployed to Bosnia. However, the applicant's service record is inconsistent with him being deployed to an active combat area in Bosnia. Therefore, the applicant was not diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability.

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 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 including PTSD on active service, which mitigates his misconduct. The applicant was diagnosed with PTSD due to his report of being deployed to Bosnia in 2019. However, this is inconsistent with his service record.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as drug/alcohol abuse and being AWOL, which can be a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. In addition, the applicant also was found indebted to someone for stereo equipment, which is not a natural sequela of the applicant's reported mental health conditions including PTSD. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's 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 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 her characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the serious and repeated pattern of misconduct during his enlistment, including nonjudicial punishment for driving while intoxicated, summary court-martial conviction for wrongful use of cocaine, dishonorable failure to pay a debt, and a period of absence without leave lasting nearly 30 days. The Board noted, the applicant provided no post-service achievements or character references for the Board to weigh in support of a clemency determination. Given the absence of mitigating evidence and the severity of his misconduct, the Board determined the characterization of service the applicant received was appropriate and equitable. Therefore, relief is denied.

3. The Board considered the following Kurta Questions:

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condition at the time of active service. In addition, the applicant also was found indebted to someone for stereo equipment, which is not a natural sequelae of the applicant's reported mental health conditions including PTSD. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

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.

//SIGNED//
X

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) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 established policy and procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12c for misconduct would receive a separation code of "JKK."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.

- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

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 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.

6. 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.

7. 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//