

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20240010278

APPLICANT REQUESTS: an upgrade of the under honorable conditions (General) characterization of service of her deceased husband, a former service member (SM).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 18 April 1977
- Marriage Certificate, dated 14 February 2022
- Certification of Death, dated 9 January 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 that at the time of his discharge, her husband was suffering from a diagnosed form of mental illness. He went on to become a productive member of society. He was proud of his service. An upgrade of his discharge would allow him to be buried in Arlington National Cemetery, which was always his wish.

3. A review of the SM's service record shows:

- a. The SM enlisted in the Regular Army on 25 June 1973.
- b. He received nonjudicial punishment on:
 - 21 February 1974, for absenting himself from his unit (AWOL), on or about 4 February 1974 until on or about 20 February 1974; and missing movement, on or about 5 February 1974

- 9 May 1974, for two specifications of being AWOL, on or about 12 April 1974 until on or about 16 April 1974 and on or about 18 April 1974 until on or about 23 April 1974
- 9 July 1974, for failure to obey a lawful order, on or about 1 July 1974
- 23 September 1975, for failure to obey a lawful order, on or about 16 September 1974
- 30 October 1975, for being AWOL, on or about 20 October 1975 until on or about 28 October 1975
- 27 July 1976, for failure to go to his appointed place of duty, on or about 8 February 1976
- 30 August 1976, for failure to go at the time prescribed to his appointed place of duty, on or about 28 June 1976

c. On 1 July 1976, the SM was barred from reenlistment.

d. The SM underwent a medical examination on 14 February 1977. He reported being in good health, with no significant medical history. He was deemed medically qualified for separation.

e. On that same date, his commander notified him of his intent to separate the SM under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), Chapter 13, due to misconduct – frequent incidents of a discreditable nature with civil or military authorities.

f. The SM was advised by consulting counsel of the basis for the contemplated separation action and its effects; of the rights available to him; and the effects of any action by him to waive his rights.

g. The chain of command recommended approval of the SM's elimination from the service, prior to the expiration of his term of service, with the issuance of an under honorable conditions (General) character of service.

h. On 11 April 1977, the separation authority approved the recommended separation; waived the rehabilitative transfer requirements; and directed the issuance of a DD Form 257A (General Discharge Certificate).

i. Accordingly, the SM was discharged on 18 April 1977, with an under honorable conditions (General) characterization of service. He completed 3 years, 8 months, and 19 days of active service.

4. In the processing of this case, the Army Review Boards Agency (ARBA) requested a copy of medical documentation to support the applicant's contention of mental health

issues related to her husband's discharge. To date, no additional documentation has been received.

5. The applicant provides the following:

a. A Marriage Certificate, showing the applicant's marriage to the SM, on 14 February 2022.

b. A Certification of Death, showing the SM's date of death as 9 January 2024 and the applicant as the surviving spouse.

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant, the wife of the former service member (SM), is applying to the ABCMR requesting an upgrade of the SM's under honorable conditions (General) characterization of service to honorable. She contends the SM experienced mental health conditions 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 SM enlisted in the Regular Army on 25 June 1973; 2) The SM received nonjudicial punishments between 21 February 1974-30 August 1976 for: A) being AWOL (4X); B) missing movement; C) not following an order (X2); and D) not being at his place of duty (X2); 3) The SM was discharge on 18 April 1977, Chapter 13, due to misconduct – frequent incidents of a discreditable nature with civil or military authorities. His characterization of service was under honorable conditions (General). He completed 3 years, 8 months, and 19 days of active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the SM'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 the SM was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the SM reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the SM had been diagnosed with a service-connected mental health condition by the VA.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the SM 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 the SM experienced mental health conditions which mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report by the applicant that the SM was experiencing a mental health condition, while he was on active service. The SM was involved in erratic and avoidant behavior such as not following orders, not being at his place of duty, and going AWOL, which could be natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends the SM was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration her contention 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 FSM's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the FSM's petition and available military records, the Board found no error or injustice existed to warrant an upgrade to honorable. The Board notes the FSM was separated due to misconduct - frequent incidents of a discreditable nature with civil or military authorities and his seven nonjudicial punishments. Additionally, the Board noted and concurred with the medical advisor's review finding insufficient evidence to support the FSM had a condition or experience that mitigated his misconduct. Based on a preponderance of evidence, the Board determined that the characterization of service the FSM received upon separation was not in error or unjust and denied relief.

2. Based upon the misconduct leading to the FSM'S separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the FSM have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the SM experienced mental health conditions which mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report by the applicant that the SM was experiencing a mental health condition, while he was on active service. The SM was involved in erratic and avoidant behavior such as not following orders, not being at his place of duty, and going AWOL, which could be natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends the SM was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the FSM'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 (USC), 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 Army Board for Correction of Military Records (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, USC, 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 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, and reviews to Army Board for Correction of Military Records applicants prior to adjudication.
3. Army Regulation 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 13-5(a), as then in effect, provided for separation for unfitness, which included frequent incidents of a discreditable nature, sexual perversion, drug abuse, shirking, failure to pay just debts, failure to support dependents and homosexual acts. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; 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//