

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010449

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. Additionally, he requests a personal appearance before the Board.

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), reflecting his service from 3 January 1997 to 28 February 2001
- Three letters of support commending his faith, work ethic, and the service and mentorship he provides to the youth within the community

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 is a different, more mature man now than he was during his time in service. At a young age due to the stress, he endured the first year of being in the Army; his decisions back then were not good ones. He lost his grandmother, mother, and two uncles during his first year of service. With all of that and being hit with divorce papers, his head was not clear. He tells his kids that he is proud that he was fortunate to have served his country. He has five children. He has mentored youth in his community with coaching and through his non-profit organization for almost 20 years.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), and other mental health issues are related to his request.
4. On 3 January 1997, the applicant enlisted in the Regular Army. He reenlisted on 1 September 1999.

5. On or about 3 January 2000, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities, on or about 6 August 2000.

6. Court-martial charges were preferred against the applicant on 10 August 2000, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

7. On 22 August 2000, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, request for discharge in lieu of trial by courts-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the specifications of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct discharge. He further acknowledged he understood that if his discharge request was accepted, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf.

c. He declined a physical evaluation prior to separation.

8. The applicant's commander recommended approval of the applicant's request for discharge, on 4 January 2001.

9. By legal review, the applicant's separation action was found to be legally sufficient for further processing.

10. The separation authority approved the applicant's request for discharge in lieu of trial by courts-martial on 30 January 2001, and directed his discharge UOTHC and reduction in grade to E-1.

11. The applicant was discharged on 28 February 2001. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 3 years, 6 months, and 22 days of net active service this period with 216 days of lost time.

12. On 29 March 2025, the ABCMR staff requested that the applicant provide medical documents to support his mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

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

14. 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 enlisted into the Regular Army on 3 January 1997 and reenlisted on 1 September 1999.
- On or about 3 January 2000, the applicant was reported AWOL and remained absent until he returned to military authorities on 6 August 2000.
- Court-martial charges were preferred against the applicant on 10 August 2000, and after receiving legal counsel, the applicant voluntarily requested discharge in lieu of trial by courts-martial.
- The applicant was discharged on 28 February 2001 and completed 3 years, 6 months, and 22 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 asserts he endured significant family stress, including the deaths of his grandmother, mother, and two uncles, as well as going through a divorce, which led to his misconduct. He expressed being a different, more mature man now. He indicated PTSD and "other mental health" as issues or conditions related to his request. The application was void of any medical or mental health records. 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. The applicant is ineligible for VA services.

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. The application did not include any mental health records, and the applicant is ineligible for VA services.

(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 no documentation of any mental health condition(s) while on active service or post-discharge. The applicant asserts several potentially traumatic events, and avoidance behaviors, such as going AWOL, can be a natural sequela to experiencing such losses. However, there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Nonetheless, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his 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 partial 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 evidence of record confirms that court-martial charges were preferred against the applicant on 10 August 2000 for violations of the Uniform Code of Military Justice (UCMJ). The applicant's DD Form 458 shows he was charged with one specification of being AWOL for the period 3 January 2000 through 6 August 2000, at which time he was apprehended by civilian authorities.

2. The offense was punishable under the UCMJ with a punitive discharge. After being charged, the applicant consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. This request was administratively processed in accordance with applicable regulations. The Board carefully reviewed the applicant's case and

found no error or injustice in the separation proceedings. The applicant's voluntary request for discharge was properly executed, and the characterization of service was appropriate given the nature of the misconduct. In view of the foregoing, the Board determined that the applicant's discharge was proper and equitable. The applicant has not provided sufficient evidence to demonstrate that his separation was erroneous or unjust. However, the Board determined during deliberation, the applicant had a prior period of honorable service which is not currently documented on his DD Form 214. The Board granted partial relief to amend the applicant's DD Form 214 to accurately reflect this honorable period of service.

3. The Board considered the following Kurta questions under liberal consideration:

a. 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. The application did not include any mental health records, and the applicant is ineligible for VA services.

b. 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.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service or post-discharge. The applicant asserts several potentially traumatic events, and avoidance behaviors, such as going AWOL, can be a natural sequela to experiencing such losses. However, there is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Nonetheless, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

4. 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
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amend the DD Form 214 for the period ending 28 February 2001 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 970103 UNTIL 990831
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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.

ADMINISTRATIVE NOTE(S): N/A

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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.
4. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

5. 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. 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//