

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240010577

APPLICANT REQUESTS:

- an upgrade of his general, under honorable conditions discharge to an honorable discharge
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 5 August 2024
- Florida Non-Resident Insurance License, 19 January 2021
- Hawaii Non-Resident Independent Adjuster, 1 December 2021
- Georgia Resident Adjuster, 11 January 2022
- Character Reference Letter, 17 July 2024
- Auria Medical Clinic, Personal Health Record Printout, 13 July 2020 to 13 July 2021
- Department of Veteran's Affairs (VA) Form 20-0996 (Decision Review Request: Higher Level Review), 5 August 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:

a. He has experienced major trust issues, intrusive memories, flashbacks, and nightmares related to past traumas. During his time in the military, he had trouble concentrating and remaining focused and making decisions.

b. He started experiencing sleep disturbances, due to fire missions and loud gun sounds. The changes have impacted his relationships, marriage, performance and overall well-being. He has been going to a private doctor for resources and ways to cope with his issues. He has had many accomplishments and has changed his life in so many ways, which has made him a man. He is a father of five and grandfather of two. He gives back to the community and is involved in mentoring the youth.

3. The applicant provides:

a. His FI non-resident Insurance license, HA non-resident independent adjuster certification, and GA resident adjuster certification as supporting documentation of his achievements.

b. The applicant's personal health record for the period 13 July 2020 to 12 July 2021, that shows in part the following problems listed:

- mixed anxiety
- depression disorder
- chronic insomnia
- snoring

c. A VA Form 20-0996 (Decision Review Request: Higher Level Review), 5 August 2024, that shows the applicant submitted a compensation regarding his hearing loss.

d. A character reference letter, 17 July 2024, submitted by Chief Warrant Officer three (CW3) (Retired) D____ R____. The letter states:

(1) They were assigned to C Battery, 1st Battalion, 82nd Field Artillery in Fort Hood, TX from July 1995 to January 2000. The applicant was a cannon crew member in his section. The applicant's duties included months of field training. A total of 275 days fielding the new paladin A6 for the Army and sixty of those days he was at the National Training Center in Fort Irwin, CA. The applicant was spending more time in the field than with his family. This was a tough and trying time for many Soldiers. It was a lot to handle for those young men fresh out of high school with families.

(2) He was one of their best, quickly adapted and he was integrated into the Field Artillery life. He was always quiet, calm and laid back. The applicant's tour of duty was exceptional, and he was slated for a Bosnia-Herzegovina rotation.

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

a. He enlisted in the Regular Army on 21 January 1997.

b. A Military Police (MP) Report, that shows on 25 November 1997 the applicant was stopped by civilian authorities for failure to make a complete stop at an intersection. Further investigation revealed the applicant was driving with a suspended driver's license. He was apprehended, transported to the MP station where he was processed and released to his unit.

c. Two DA Form's 4856 (Developmental Counseling Form), 1 December 1997, that show the applicant was counseled for failure to make formation and missing battery alert.

d. A memorandum dated 2 December 1997, issued by his command that shows suspension of the applicant's installation driving privileges.

e. On 20 February 1998, he received non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that he did on 20 February 1998 wrongfully use marijuana. His punishment included reduction to private (PVT) (E-1); forfeiture of \$463.00 pay per month for two months; and extra duty for 45 days.

f. Two DA Form's 4856 that show the applicant received the following adverse counseling's:

- On 20 March 1998, for failure to follow instructions and failure to report
- On 8 April 1998, for initiation of Chapter 14 proceedings, wrongful use of marijuana (second offense), disposition during clearing, and the chapter physical

g. On 28 April 1998, he received NJP, under the provisions of Article 15 of the UCMJ, in that he did on 24 March 1998 wrongfully use marijuana. His punishment included forfeiture of \$463.00 pay per month for two months; extra duty for 45 days; and restriction for 45 days.

h. A DA Form 3822-R (Report of Mental Status Evaluation) is not available in the records.

i. On 5 June 1998, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was for the wrongful use of marijuana on two separate occasions. The applicant acknowledged receipt on 6 June 1998.

j. On 6 June 1998, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading however, an act of consideration by either board does not imply that his discharge will be upgraded
- he will be ineligible to apply for enlistment for a period of 2 years after discharge
- he elected not to submit a statement on his own behalf

k. The applicant's immediate and intermediate commanders formally recommended the applicant be separated under AR 635-200, Chapter 14-12c, prior to the expiration of his term of service. Additionally recommending his characterization of service be characterized as general under honorable conditions.

l. On 23 June 1998, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. He would be issued a general, under honorable conditions characterization of service.

m. On 7 July 1998, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 5 months and 17 days of active-duty service with no lost time.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he was experiencing 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 21 January 1997; 2) On 25 November 1997, the applicant was stopped by civilian authorities for a traffic violation. Further investigation revealed the applicant was driving with a suspended driver's license; 3) On 1 December 1997, the applicant was counseled for failure to make formation and missing battery alert; 4) On 20 February 1998, the applicant received non-judicial punishment (NJP) for using marijuana; 5) The applicant received an adverse counseling on 20 March 1998 for failure to follow instructions and failure to report; 6) On 28 April 1998, he received NJP for again using marijuana; 7) On 7 July

1998, the applicant was discharged, Chapter 14-12c for commission of a serious offense. His service was characterized as general, under honorable conditions. He completed 1 year, 5 months and 17 days of active-duty service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy civilian medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability for a mental health condition, including PTSD. The applicant provided civilian medical documentation from 2020-2021. The applicant was diagnosed with Insomnia, Anxiety, and Depression. There was insufficient evidence provided on the history of these conditions and their relevance to the applicant's military service.

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 mental health 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 PTSD, which mitigates his misconduct. The applicant provided evidence of being diagnosed with Insomnia, Anxiety, and Depression in 2020-2021 by a civilian medical provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while 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 PTSD, while he was on active service. The applicant did engage in avoidant and erratic behavior such as using illegal substances, not following orders, and not reporting to duty, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health

condition or an experience which mitigates his misconduct, and per Liberal Consideration the 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 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 applicant was separated for misconduct with the commander citing a positive urinalysis for marijuana on two occasions and multiple disciplinary infractions. In addition, the Board concurred with the medical advisory opinion, which found insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 PTSD, which mitigates his misconduct. The applicant provided evidence of being diagnosed with Insomnia, Anxiety, and Depression in 2020-2021 by a civilian medical provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while 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 PTSD, while he was on active service. The applicant did engage in avoidant and erratic behavior such as using illegal substances, not following orders, and not reporting to duty, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience which mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

3. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 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.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (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.

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, traumatic brain injury, sexual assault, or sexual harassment. 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.

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 (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.

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 based on equity, injustice, or clemency grounds, BCM/NRs 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. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//