

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240010596

APPLICANT REQUESTS:

- An upgrade of his under other than honorable discharge to honorable
- A narrative change
- Restore rank
- A disability discharge
- A personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge), 4 October 2024
- Two DD Forms 149 (Application for Correction of Military Record), 29 September 2024 and 20 November 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 January 1997
- Army Review Boards Agency letter, 6 November 2024
- Military Personnel Record Jacket (MPRJ) documents (20 pages)
- Sergeant First Class [REDACTED] letter, 19 September 1996, recommending retention in the Army until expiration term of service (ETS)
- Department of Veterans Affairs letter, 19 January 2024, showing an intent to file claim
- VA Form 21-22 (Department of Veterans Affairs (VA) Appointment of Veterans Service Organization as Claimant's Representative), 21 August 2024
- VA Form 21-10210 (Lay/Witness Statement), 2 November 2024, SFC [REDACTED] applicant's brother, supporting the applicant's contention of mental health issues
- VA Form 10-10163 (Request for and Permission to Participate in Sharing Protected Health Information through Health Information Exchanges), 3 October 2024
- VA Form 21-0781 (Statement in Support of Claimed Mental Health Disorder(s) Due to an In-Service Traumatic Event(s), 3 October 2024
- VA Form 21-10210 (Lay/Witness Statement), 2 November 2024, from applicant
- Medication Refills, 14 November 2024, showing the applicant was prescribed medication for depression and pain

- Post-service college transcripts, awards, and training certificates

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, in effect, his characterization should be upgraded because of his mental capacity, which was affected by post-traumatic stress disorder (PTSD) while in the service. His misconduct was a result of his undiagnosed PTSD and he did not have the knowledge or coping skills to deal with traumatic experiences. His conduct was not willful or persistent. He was informed his discharge would be automatically upgraded in a certain number of years. He is a homeless wartime veteran facing financial hardship. He is now receiving treatment for PTSD and depression. The applicant claims PTSD, traumatic brain injury (TBI), and other mental health issues, and the request is related to the Persian Gulf War. (The applicant further details the contentions in the VA Form 21-10210 (Lay/Witness Statement), which is available for the Board's review in the supporting documents).

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

a. The applicant enlisted in the Regular Army on 3 November 1992 for four years; he reenlisted on 13 June 1996 for three years.

b. The highest rank/grade held was Specialist/E-4.

c. The applicant served overseas in Germany (see MPRJ presented by the applicant).

d. The Army Discharge Review Board Case Number AR20050007894 shows:

- On 24 July 1996, the applicant received a Field Grade Article 15, Uniform Code of Military Justice (UCMJ), for wrongful use of cocaine and marijuana on 29 May 1996
- In November 1996, he received Summarized Article 15, UCMJ, for failure to repair, missed movement, failure to obey a lawful order on 6 November 1996
- On 13 December 1996, he received a Field Grade Article 15, UCMJ, for wrongful use of cocaine between 30 September 1996 and 30 October 1996

- On 15 December 1996, his commander notified him of the intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), Chapter 14 due to misconduct, commission of a serious offense based on wrongful use of cocaine and marijuana
- He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effects of any action by him waiving his rights; he unconditionally waived his rights to appear before an administrative separation board
- The chain of command recommended approval and that his character of service be under other than honorable conditions
- On 23 January 1997, the separation authority approved separation; he directed an under other than honorable conditions discharge

e. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- He was discharged on 31 January 1997, under other than honorable conditions under the provisions (UP) of Army Regulation (AR) 635-200, (Personnel Separations – Enlisted Personnel), paragraph 14-12c(2)
- He was discharged at the rank/grade of Private/E-1
- He completed 4 years, 2 months, and 28 days net active service this period
- Narrative Reason for Separation: Misconduct
- He was awarded:
  - Army Achievement Medal, 2nd Award
  - National Defense Service Medal
  - Army Service Ribbon

4. The Operations Desert Shield/Desert Storm Database, compiled by the Defense Manpower Data Center, is the primary file that contains one record for each active duty member who participated in theater between 2 August 1990 and 31 July 1991. The database is void of any information regarding the applicant serving in the theater during this period.

5. On 20 December 2005, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

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 discharge and a medical disability discharge with relevant changes to his DD214. He contends he was experiencing mental health conditions including PTSD along with a traumatic brain injury (TBI) that mitigates his misconduct and warrants a medical disability discharge. 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 3 November 1992; 2) The applicant received two Field Grade Article 15s for use of illegal drugs between May and December 1996; 3) In November 1996, the applicant received a summarized Article 15 for failure to repair, missing movement, and failure to follow an order; 4) On 31 January 1997, the applicant was discharged, Chapter 14-12c (2), Misconduct-Commission of a serious offense. His service was characterized as under other than honorable conditions. He completed 4 years, 2 months, and 28 days of net active 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), hardcopy VA documentation, and civilian medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD along with a TBI that mitigates his misconduct and warrants a medical disability discharge. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD during his active service. There is also insufficient evidence the applicant reported or was diagnosed with a TBI during his active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connect TBI or mental health condition including PTSD by the VA, and he does not receive any service-connected disability. The applicant provided a personal prescription for symptoms of depression and pain, dated 2024. There was insufficient evidence provided that the applicant's medication and symptoms are related to his active 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. In addition, there is insufficient evidence the applicant was experiencing a medical or mental health condition during his active service which did not meet medical retention standards.

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 and mental health conditions including PTSD which mitigates his misconduct. The applicant was prescribed medication in 2024 for symptoms of depression and pain

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD 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 the applicant was experiencing a TBI or mental health condition including PTSD, while he was on active service. The applicant did use illegal drugs and engage in misconduct, which could be avoidant or erratic behavior and a natural sequela to some mental health conditions including PTSD or a TBI. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence the applicant was diagnosed with a mental health condition or a TBI while on active service, which did not meet medical retention standards. Therefore, there is insufficient evidence to warrant a referral to DES to be assessed for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that 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 partially warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The applicant received two Field Grade Article 15s for use of illegal drugs between May and December 1996; in November 1996, the applicant received a summarized Article 15 for failure to repair, missing movement, and failure to follow an order; and on 31 January 1997, the applicant was discharged, Chapter 14-12c (2), Misconduct-Commission of a serious offense. His service was characterized as under other than

honorable conditions and he was discharged in the lowest enlisted rank of Private (PVT)/E-1.

a. The Board was impressed by the applicant's awards and post-service achievements. As such, the Board determined it was appropriate to upgrade his characterization of service to under honorable conditions (general).

b. The Board considered reinstating the applicant's rank/grade; however, the record is silent as to whether he was reduced as a result of NJP or as a result of his characterization of service. Without having evidence to show why the applicant was reduced, there is insufficient evidence to justify correcting the record to show a different rank/grade.

c. The applicant was properly separated under the provisions of Army Regulation 635-200, paragraph 14-12c for commission of a serious offense; this is evident from the NJP he received.

4. The applicant requested a medical discharge on the basis of BH and TBI. However, the medical advisor opined and the Board agrees that there is insufficient evidence the applicant was experiencing a medical or mental health condition during his active service which did not meet medical retention standards.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

█                █                █                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 amending his DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 31 January 1997 to show he received an under honorable conditions (general) characterization 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 changing his narrative reason for separation, restoring his rank/grade, and any relief pertaining to a disability discharge.

5/6/2025

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. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.
3. Title 10, U.S. Code, section 1556 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.
4. 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 will decide cases on the evidence of record. It is not an investigative body. 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.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) set forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes 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. Paragraph 14-12c(2) prescribes separation for drug offenders, and provides first-time drug offenders in the grade of sergeant and above, and all Soldiers with three years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense. All drug offenders must be processed for separation after a second offense. Medically-diagnosed drug dependent Soldiers, will be processed for separation upon completion of actions required by AR 600-85.

a. 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.

b. A general discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An under other than honorable conditions is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities (statutory, regulatory, and Department of Defense/Army policy) and reasons for separating Soldiers from active duty. In addition, it prescribes when to enter SPD codes on the DD Form 214. The SPD code JKK is appropriate for assignment when the narrative reason for discharge is Misconduct and the authority is Army Regulation 635-200, paragraph 14-12c(2).

7. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

8. The U.S. Army does not have, nor has it ever had, a policy to automatically upgrade discharges. Each case is decided on its own merits when an applicant submits a DD Form 149 requesting a change in discharge. Changes may be warranted if the Board determines the characterization of service, the reasons for discharge, or both were improper or inequitable.

9. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

10. 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.

//NOTHING FOLLOWS//