

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 May 2025

DOCKET NUMBER: AR20240010657

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)
- Medical Record (1 page)
- Medical Examiner's Certificate (mother)
- Two Character Letters

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 marked on his DD Form 149 he requested an upgrade of his under other than honorable conditions discharge to general, under honorable conditions or honorable. He further noted:

- he enlisted at the age of 17, he had issues with alcohol, drugs and was under the influence of drugs during in-processing, as a result he was sent to have a psychiatric examination on 28 November 1984
- he passed his examination and started basic combat training (BCT) at Fort Dix N.J.
- on 4 February 1985 his mother was killed in a car accident
- on 5 February 1985 he was placed on emergency leave to be with his brother and attend the funeral
- seven days later he returned to BCT, and passed all training
- he graduated advanced individual training (AIT), on 13 May 1985 he was sent to Fort Wainwright, AK, he was under the impression he would be stationed in VA

- on 18 May 1985 he was in a bar drunk and doing drugs, subsequently sent to Alcoholics Anonymous

3. The applicant provides a Medical Examiner's Certificate which lists his mother's date of death as 4 February 1985, additionally two-character letters show:

a. His grandmother, E____ H____, 25 March 1985, states the applicant's mother was killed in a car accident, she has custody of the applicant's younger brother, and in the absence of the father, having the applicant closer would be helpful.

b. His pastor, J____ R____, undated, states the maternal grandparents currently have custody of the younger brother, and having the applicant closer would be beneficial in the grief process.

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

a. He enlisted in the Regular Army on 24 January 1985.

b. A Standard Form 513 (Medical Record) completed on 28 November 1984 shows the applicant was referred because of a history of marijuana use from 1983 to 1984. The applicant stopped using marijuana because it interfered with his job performance, and he wanted to clean himself up. He occasionally drinks beer and rarely became intoxicated. He had no history of problems with the law. The prognosis for continued avoidance of usage was good.

c. The DA Form 2-1 (Personnel Qualification Record) shows the applicant served in Alaska from 15 May 1985 to 20 March 1986.

d. On 26 November 1985, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) in that he did on or about 1 October 1985 wrongfully introduce onto the installation Fort Wainwright some amount of marijuana. His punishment included of reduction to private, E-1.

e. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 10 January 1986, the applicant underwent a mental evaluation for the purpose of separation. The applicant was cleared for administrative action as deemed appropriate by his command

f. On 10 January 1986, the applicant's immediate commander notified the applicant on of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, for commission of a serious offense. He noted the specific reasons for separation were based on his misconduct-abuse of illegal drugs. Specifically, on or between 15 to

25 October 1985, the applicant used marijuana. The commander recommended the applicant receive an under other than honorable conditions discharge.

g. On the same day, 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 general, under honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he elected to submit matters on his own behalf

h. 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 under other than honorable conditions.

i. On 12 March 1986, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12, for commission of a serious offense. He further directed the applicant be furnished an under other than honorable conditions discharge.

j. On 20 March 1986, the applicant was discharged, with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 1 month, and 17 days of active service with no lost time..

5. On or about 27 September 1988, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. The applicant did not specify a BH condition on his application as part of his request; however, it was noted that he reported having issues with alcohol and drugs. As such, his case will be reviewed as it pertains to Other Mental Health Issues. 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 24 January 1985, 2) A SF 513 completed on 28 November 1984 shows the applicant was referred for a history of marijuana use from 1983 to 1984. It was documented that stopped using marijuana because it interfered with his job performance, and he wanted to clean himself up. He occasionally drank beer and rarely became intoxicated. He had no history of problems with the law. The prognosis for continued avoidance of usage was good, 3) the applicant received an Article 15 on 26 November 1985 due to wrongfully introducing onto the installation some amount of marijuana on or about 01 October 1985, 4) The applicant underwent a mental evaluation on 10 January 1986 for the purposes of separation and was cleared for any administrative action deemed appropriate by command, 5) on 10 January 1986, the applicant's immediate commander notified the applicant on of his intent to recommend him for separation under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. He noted the specific reasons for separation as, between 15 to 25 October 1985, the applicant used marijuana, 6) the applicant was discharged on 20 March 1986 under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense, with a separation code of JKO and reentry code of 'RE-4,' 7) on 27 September 1988, the ADRB denied the applicant's previous petition for relief.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant underwent a psychiatric evaluation on 28 November 1984 due to marijuana use, which appears to have occurred prior to going on active duty. He reported discontinuing marijuana use in August 1984. The provider documented that he was "probably having an Adjustment Reaction or Adjustment Disorder," attributed to adolescent acting-out behavior such as marijuana use. The provider documented that the prognosis of continued avoidance of marijuana use was "good."

d. A Report of Medical History dated 17 November 1984, completed for the purposes of enlistment, shows he marked 'no' to all BH-related items. He marked 'yes' to history of head injury. The Report of Medical Examination for enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. A consultation request for a Cocaine Abuse evaluation was submitted from the Army Drug Abuse and Prevention Control Program (ADAPCP) to internal medicine on 13 November 1985. The applicant underwent a Mental Status Evaluation (MSE) on 10 January 1986 due to Chapter 14 separation discharge IAW AR 635-200. All domains of the MSE were within normal limits (WNL). It was documented that he was mentally capable of understanding and participating in the proceedings, was mentally responsible, and met the retention

requirements of Chapter 3, AR 40-501. The provider documented that he was psychiatrically cleared for any administrative action deemed appropriate by command. A Report of Medical Examination dated 08 January 1986 for the purposes of separation under Chapter 9 shows item number 42, psychiatric, as "normal" on clinical evaluation. He was medically cleared for separation. The associated Report of Medical History shows that he marked 'yes' to the following BH-related items: attempted suicide. In the comments section, it was documented that he attempted suicide at age 14-years-old.

e. A review of JLV was void of medical information. There is no documentation that he is service-connected through the VA for any conditions and there were no VA medical records available for review. It is of note that the applicant's UOTHC discharge renders him ineligible for VA services.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his discharge was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any mitigating BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. Records show a pre-military history of marijuana use, an in-service referral for cocaine abuse, and in-service use of marijuana. It is of note that Substance Use Disorders do not constitute mitigating conditions. A pre-service evaluation indicated the applicant may have had Adjustment Reaction/Disorder prior to service, which is constituted as a condition that Existed Prior to Service (EPTS). Liberal Consideration is not required for EPTS conditions when there is insufficient evidence that the condition was aggravated by military service. The available records are void of any documentation showing that he continued to meet criteria for this condition in-service or that the condition was aggravated by military service. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his

misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the misconduct involved and the guidance on liberal consideration. However, based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation and the lack of mitigation for such misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant'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.

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

a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b states 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 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

3. 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 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.

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 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.

5. 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/NR) 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. 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.

6. 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//