

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010666

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions discharge. Also, corresponding changes to:

- Reason and Authority to Secretarial Authority
- Reenlistment Code from RE-3B to something else
- Separation Program Number (SPN) from 246 to JFF

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit list showing all document submitted in support of his claim
- DD Form 214 (Report of Transfer or Discharge)
- Counsel brief (12 pages) addressed below (Entire brief is available for the Board's review in supporting documents)
- Exhibit A - Personal statement (2 pages) addressed below (The entire statement is available for the Board's review in supporting documents)
- Exhibit B - Service Records (225 pages) in support of his claim
- Exhibit C - Post-Service Medical Records (180 pages) in support of his claim
- Exhibit D - Character Statement (N.P.) stating she has known the applicant for 45 years and during that time he has always been punctual, helpful, trustworthy, responsible, and dependable
- Exhibit E1 - Hagel, Kurta, and Wilkie memos in support of his claim
- Exhibit E2 - DoD Instruction 6130.03 excerpts showing prior psychiatric hospitalization for any cause as a catchall disqualifying condition
- Exhibit E3 – Army Regulation (AR) 635-200 (Active Duty Enlisted Separations) excerpt as it relates to separation because of dependency or hardship
- Exhibit E4 - The schizoaffective disorder diagnosis: A conundrum in the clinical setting article in support of his claim
- Exhibit E5 - Queensland Brain Institute: How do mental disorders impacts our decision-making? article in support of his claim
- Exhibit E6 - Military Personnel Who Seek Health and Mental Health Services Outside the Military (Military Medicine) volume 183 in support of his claim

- Exhibit E7 - 32 CFR §70.9 (Discharge Review Standards) includes matters in extenuation or mitigation of the reason for the discharge that may have affected the applicant's ability to serve satisfactorily

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170015752 on 23 December 2019.

2. The applicant states his enlistment in the Army is voided due to his pre-service mental health disqualified him from service, next his family issues posed a challenge to his service, and he should have been considered for a hardship discharge. He meets the upgrade criteria established by federal law and the Hagel and Kurta memos, which govern the discharges based on conduct secondary to mental health conditions. His discharge is unjust considering the factors such as his age, education, and language barriers in consideration of his enlistment and misconduct. The length of time since he left service merits clemency under the Wilkie memo. In his 2-page personal statement (which is available for the Board's review in supporting documents) he discusses:

- How his recruiter told him he was being drafted, which he did not understand that he was signing enlistment documents since he did not understand English well
- His mental health prior to enlistment and during basic training
- The reason he went absent without leave (AWOL) was his ill mother and the need to support his younger siblings
- He was confined and mistreated physically and emotionally
- Post service struggles with mental health and schizoaffective disorder
- Victim of fraudulent recruitment
- Clemency request nearly 50 years has passed

3. Counsel states in a 12-page counsel brief in part (which is available for the Board's review in supporting documents):

a. The applicant was the victim of fraudulent misrepresentation by recruiters and was induced to enlist in the Army at age 19, believing he had been drafted. He who had a history of pre-service mental health conditions also began to experience the onset of schizoaffective disorder while in service. Despite seeking medical care from the Army for his mental health condition shortly into training, he was not provided any resources or mental health treatment. The applicant, suffering from untreated and unmanaged mental health issues, went AWOL to care for his family in Puerto Rico. Based on his actions, he was given an other than honorable discharge. His continued punishment 50 years since his service is disproportionate to his misconduct. Further, his current

diagnosis of schizoaffective disorder by the Veterans Affairs mitigates his misconduct. He graciously seeks an upgrade.

b. Counsel states in summary of issues the error of the applicant's discharge characterization being based on numerous errors in procedure. The injustice due to his misconduct was attributable to his mental health issues. Clemency is based on him being punished for 50 years.

c. Counsel contends there are numerous bases for the applicant's discharge to be upgraded in detail. Those reasons are:

- His enlistment was defective making his voluntary obligation void due to misrepresentation and misinformation of Army personnel
- He suffered from mental health conditions prior to service which should have disqualified him and would so under today's regulations
- His misconduct was due to having to care for family members and should have resulted in a hardship discharge
- Under 10 U.S.C. § 1553 and the Hagel and Kurta Memos, his schizoaffective disorder which began in service mitigates his misconduct and entitles him to an upgrade to Honorable (detailed)
- His capability to serve was affected by various factors and mitigate the misconduct that led to his unjust discharge
- Under the Wilkie Memo, he deserves a second chance since he has paid for his misdeeds; his age during the time of service and the length of time since his misconduct merit an upgrade

d. Counsel concludes the applicant was a young man who was not meant to enlist in the Army and was discharged under other than honorable conditions. The traumatic events or his service including the revelation, or a fraudulent enlistment and a family emergency were compounded by the onset of his schizoaffective disorder and mental health struggles. His command did not provide him with support or assistance nor did the Army provide treatment or an outlet for mental health struggles. His misconduct should be mitigated by his mental health struggles and circumstances. He regrets his actions and now seeks forgiveness and understanding. With further recognition of the role of mental health played in his misconduct, it is unjust for him to continue to be harshly punished fifty-two years later. As such, he kindly requests his discharge be upgraded and corresponding change made to his records.

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

- a. He enlisted in the Regular Army on 2 October 1972.

b. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 13 April 1973, for on or about 8 December 1972, without authority, absent himself from his unit, and did remain so absent until on or about 5 April 1973.

c. On 26 April 1973, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 in lieu of court-martial.

d. His chain of command recommended approval and recommended an under other than honorable conditions discharge.

e. On 7 May 1973, the separation authority approved separation under the provisions of AR 635-200, chapter 10. He directed an Undesirable Discharge Certificate be issued and that he be reduced to the lowest enlisted grade. Also, the reason and authority for discharge item 11c of DD Form 214, will be for the good of the service with a SPN of 246.

f. Accordingly, he was discharged on 4 June 1973, under conditions other than honorable. His DD Form 214 shows he completed 3 months and 5 days net active service this period. He had 118 days lost time from 8 December 1972 thru 4 April 1973.

5. On 31 July 1974, 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 his previous request (AR20170015752) convened on 23 December 2019; after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends that his request is related to his experience of mental health conditions that impacted the circumstances of his 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 entered the Regular Army on 2 October 1972; 2) On 13 April 1973, court martial charges were preferred against him for going AWOL from 8 December 1972 to 5 April 1973; 3) The applicant was discharged on 4 June 1973, Chapter 10. He completed 3 months and 5 days of net active service and 118 days lost time from 8 December

1972 to 4 April 1973. His military service was characterized as under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions during his active service that impacted his conduct resulting in his ultimate discharge. The applicant noted in his application that he experienced unlisted mental health conditions initially impacting his eligibility for service prior to joining the military and consequently they also impacted him during his time in service. However, there is insufficient evidence that the applicant reported or was diagnosed with any mental health symptoms while on active service. On 10 May 1973, the applicant underwent a medical examination for the purpose of administrative separation, where the applicant denied any medical or mental health difficulties and resulted in his clearance from a physical and mental health perspective.

d. The VA's Joint Legacy Viewer (JLV) revealed that the applicant became connected with VA medical care beginning on 14 February 2006 for physical concerns, and then for mental health concerns beginning on 11 October 2017. The applicant was primarily treated for various depressive disorders, generalized anxiety disorder, cannabis use disorder, and schizoaffective disorder. There was insufficient evidence that any of the applicant's VA providers connected any of his mental health conditions to his military service. There is insufficient evidence that the applicant has been diagnosed with a service-connected mental health condition, nor does he receive service-connected disability for a mental health condition at this time.

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 service-connected 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 contends he was experiencing mental health difficulties including schizoaffective disorder, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health difficulties that may include schizoaffective disorder at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as going AWOL that could be determined to be avoidant behavior. Avoidant behavior can be a natural sequelae some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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 DoD 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 pending court-martial charges for being absent without leave from 8 December 1972 to 5 April 1973, punishable under the Uniform Code of Military Justice with a punitive discharge. The applicant received an Under Other Than Honorable Discharge with a narrative reason "in lieu of trial by court-martial", a "246" separation code, and a reentry code of 3B due to in lieu of trial by court martial.

a. Character of Service: Deny. The Board found no error or injustice in the designated characterization of service assigned by his commander during separation. The Board noted the applicant's age, not having a clear understanding of the English language and his family illness; however, due to the length of his AWOL and based on a preponderance of the evidence, and the medical opinion, the Board concluded that the characterization of service the applicant received upon separation was appropriate and denied relief.

b. Narrative Reason for Separation: Deny. The Board found no error or injustice in the narrative reason for separation the applicant received upon his separation. The Board noted he voluntarily requested and was approved for separation in lieu of trial by

counsel, and therefore the narrative reason for separation is appropriate. The Board concluded that there is no error or injustice and denied relief.

c. Reenlistment Code: Deny. The Board found no error or injustice in the reenlistment code the applicant received upon separation. Pursuant to Army Regulation, the reenlistment code he received was the appropriate code for his separation. Therefore, the Board concluded there was no error or injustice and denied relief.

d. Separation Code: Deny. The Board found no error or injustice in the separation code the applicant received upon separation. Pursuant to Army Regulation, the code he received accurately reflects the code for in lieu of trial by court-martial; therefore, the Board determined there was no error or injustice and denied relief.

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 contends he was experiencing mental health difficulties including schizoaffective disorder, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced mental health difficulties that may include schizoaffective disorder at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as going AWOL that could be determined to be avoidant behavior. Avoidant behavior can be a natural sequelae some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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 amendment of the ABCMR decision rendered in Docket Number AR20170015752 on 23 December 2019.



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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:

a. Chapter 10 is applicable to members who had committed an offense or offenses for which the authorized punishment included a bad conduct, or dishonorable discharge could submit a request for discharge for the good of the service. The request could be submitted at any time after the charges had been preferred. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.

c. 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.

2. AR 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and non-waivable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

a. It identifies the SPD code of "246" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, chapter 10 for reason discharge for the good of the service.

b. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200 with a narrative reason of "Secretarial Authority."

c. The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

4. 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.

5. 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.

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//