

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240010683

APPLICANT REQUESTS: upgrade of his (general) under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter addressed below
- Department of Veterans Affairs letter showing his posttraumatic stress disorder (PTSD) with unspecified depressive disorder was increased to 70% effective 21 October 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 his discharge should be upgraded to honorable, due to his diagnosis after discharge. He was diagnosed with PTSD rated at 70% after discharge. He was just notified that he could request an upgrade. Please consider the events that took place and the PTSD he lives with in the decision.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 1 October 1987.
 - b. He received non-judicial punishment (NJP) on 25 April 1988, for on or about 28 March 1988, knowingly and wrongfully consume an alcoholic beverage being under the age of 21 and on or about 28 March 1988, operate a vehicle while drunk.

c. On 27 July 1988, a General Officer Memorandum of Reprimand (GOMOR) was issued for driving while intoxicated at Fort Wainwright, AK, on 28 March 1988. He acknowledged receipt of the GOMOR on 29 August 1988. He elected not to make a statement.

d. He received NJP on 5 January 1989, for:

- On or about 12 November 1988, wrongfully use provoking words toward another Soldier
- On or about 12 November 1988, was disorderly
- On or about 12 November 1988, being under the age of 21, knowingly and wrongfully consume an alcoholic beverage

e. He received NJP on 7 April 1989, for on or about 23 December 1988, wrongfully possess a military identification card, issued to Private First-Class R__ for his use alone. He was reduced to private/E-2.

f. On 18 July 1989, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), chapter 14 due to misconduct – a pattern of misconduct; he acknowledged the same day.

g. He was advised by consulting counsel of the basis for the contemplated action to separate him for misconduct – a pattern of misconduct UP of Chapter 14, AR 635-200 and its effects; of the rights available to him; and the effects of any action by him waiving his rights

h. His chain of command recommend approval and that his character of service be (general) under honorable conditions.

i. On 20 July 1989, the separation authority approved separation UP of AR 635-200, paragraph 14-12b for misconduct – patterns of misconduct; he directed a General Discharge Certificate be issued.

j. Accordingly, he was discharged under honorable conditions on 4 August 1989, UP of AR 635-200, paragraph 14-12b. He completed 1 year, 10 months, and 4 days net active service this period.

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

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. 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 1 October 1987.
- The applicant received NJP on 25 April 1988 for knowingly and wrongfully consume an alcoholic beverage being under the age of 21 and operating a vehicle while drunk on 28 March 1988. On 27 July 1988, a General Officer Memorandum of Reprimand (GOMOR) was issued for driving while intoxicated at Fort Wainwright, AK, on 28 March 1988.
- He received NJP on 5 January 1989 for events occurring on 12 November 1988: wrongfully use provoking words toward another Soldier; being disorderly, being under the age of 21, knowingly and wrongfully consume an alcoholic beverage, being under the age of 21, and knowingly and wrongfully consume an alcoholic beverage.
- He received NJP on 7 April 1989, for on or about 23 December 1988, wrongfully possess a military identification card issued to Private First Class R__ for his use alone.
- On 18 July 1989, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, chapter 14 due to misconduct – a pattern of misconduct.
- The applicant was discharged on 4 August 1989 and completed 1 year, 10 months, and 4 days 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 his discharge should be upgraded due to his diagnosis after his discharge. He indicated PTSD and "other mental health" as issues or conditions related to his request. A VA Rating Decision letter dated 30 October 2021 showed an increase in his rating for PTSD from 50% to 70%. 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 an Initial PTSD Compensation and Pension (C&P) evaluation was conducted on 30 July 2018. Documentation from this exam noted a non-VA treatment history dating back to 2010 with diagnoses of depression and anxiety and prescriptions for an antidepressant and three anxiolytic medications. There were also psychotherapy records from 2011 with diagnoses of panic disorder and “rule out” of PTSD and bipolar disorder. The applicant endorsed the requisite number and severity of symptoms to warrant a diagnosis of PTSD, and the primary, in-service trauma was related to a bar fight where the applicant was attacked by two men. The applicant “bit off a part of one of the man’s nose” and arrest records showed assault charges, but court documents indicated he was acquitted. The evaluator concluded the PTSD was “at least as likely as not related to the assault he experienced in service” and discussed the applicant witnessing a parachute accident, which was traumatic but not the primary source of his PTSD. He was also diagnosed with Depressive Disorder, but it was noted that this condition was independent of his PTSD. A Review PTSD C&P examination was conducted on 4 November 2023, and this evaluation discussed his treatment history for PTSD with both medications and psychotherapy. There was reference to a C&P conducted in 2021, but that documentation was not available for review by this BH Advisor. The evaluator concluded he continued to meet criteria for PTSD and Depressive Disorder. The applicant is 100% service connected for Meniere’s Syndrome and 70% service connected for PTSD.

VA records show the applicant initiated mental health treatment at VA on 6 August 2014 and reported panic attacks, vertigo, hypervigilance, nightmares, depression, and sleep difficulty. He reported trauma exposure of “saw a friend fall out of an airplane” (friend survived). However, he did not meet full criteria for PTSD and was diagnosed with Mood Disorder, Anxiety with panic attacks and agoraphobia, and Substance Use, in early remission (alcohol). A cursory review of treatment history showed engagement in PTSD treatment (psychotherapy) and medication management.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that partially 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. There are no mental health records from his time in service, but VA records document a history of treatment for PTSD dating back to 2010 through a non-VA provider. The applicant is 70% service connected for PTSD and has received treatment for this condition through the VA.

(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. His in-service trauma exposure included being in a bar fight and physically assaulted by two men as well as witnessing a parachuting accident.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant has been treated for PTSD and is 70% service connected for this condition. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and substance use, and in accordance with Liberal Consideration, the applicant's misconduct related to underaged drinking and DWI could be considered mitigable. However, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to wrongfully using provoking words toward another soldier (i.e. threatening him with physical harm) and wrongfully possessing a military identification card of another soldier. These types of misconduct are not part of the natural history or sequelae of a mental health condition, and his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates 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 relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency consideration for requesting upgrade of discharge characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the medical opine finding insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service. The Board considered the behavioral health opine finding sufficient evidence to support that the applicant had a condition or experience that partially mitigates his misconduct.

2. The Board determined that, despite the behavioral health opinion, there was insufficient evidence of in-service mitigating factors to outweigh the applicant's

misconduct. The misconduct included knowingly and wrongfully consuming alcohol while under the legal age of 21 and operating a vehicle while intoxicated, which resulted in the applicant receiving a General Officer Memorandum of Reprimand (GOMOR). Additionally, the applicant did not provide post-service achievements or character letters for consideration in support of clemency.

3. The Board considered the 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. There are no mental health records from his time in service, but VA records document a history of treatment for PTSD dating back to 2010 through a non-VA provider. The applicant is 70% service connected for PTSD and has received treatment for this condition through the VA.

(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. His in-service trauma exposure included being in a bar fight and physically assaulted by two men as well as witnessing a parachuting accident.

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4. The Board concurred that the applicant was discharged due to a pattern of misconduct and was appropriately issued an Under Honorable Conditions (General) characterization of service. The applicant's service record contained multiple instances of misconduct during his enlistment period of 1 year, 10 months, and 4 days of net

active service. The Board determined that the discharge characterization was justified, as the applicant did not meet the standards of acceptable conduct and performance required for an Honorable discharge. Based on the preponderance of evidence, the Board concluded that the character of service upon separation was neither in error nor unjust. Therefore, relief was denied.

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 (AR) 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

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. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. 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.

4. 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.

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/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.

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//