

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240010686

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, 3 pages
- Certificate of Achievement, dated 28 March 1979, for outstanding duty performance while assigned Fort Kobbe, Canal Zone from 12 April 1977 to 12 April 1979
- Neurological medical note, dated 26 January 2024, shows he received consultation for traumatic brain injury (TBI), chronic headaches, and memory loss

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 Numbers:

- AC83-09492 on 26 October 1983
- AR20220004482 on 31 December 2022

2. The applicant states he was a boxer in the Army for 2 years. After his fights, he was never checked out for head injuries. The Army did not give him the help he needed. Following his discharge, he sought treatment for mental health and TBI issues.

3. Having previous honorable service in the Regular Army, the applicant reenlisted on 30 August 1979.

4. Before a special court-martial on 10 June 1980, at Fort Hood, TX, the applicant was found guilty of one specification of disobeying a lawful order, on or about 18 May 1980; and one specification of unlawfully receiving a stolen camera, the property of a sergeant, on or about 14 March 1980.

5. The court sentenced him to reduction to E-1, forfeiture of \$150.00 pay per month for four months, and confinement at hard labor for four months. The sentence was approved on 31 August 1978.
6. On 16 August 1980, the applicant was reported as absent without leave (AWOL) and remained absent until his return to military authorities on 17 August 1980.
7. On 22 August 1980, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$50.00 per month for one month, and 10 days restriction and extra duty.
8. On 3 September 1980, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order, on about 2 September 1980; and absenting himself from his unit, on or about 2 September 1980. His punishment included forfeiture of \$75.00 per month for one month, and 10 days restriction and extra duty.
9. The applicant's commander notified him on 11 September 1980, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), paragraph 14-33, for frequent incidents of a discreditable nature. He cited the applicant's conduct and efficiency were unsatisfactory.
10. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14.
11. On 12 September 1980, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He acknowledged he understood that, as the result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He declined to submit a statement in his own behalf.
12. On 16 September 1980, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
13. Consistent with the chain of command recommendations, the separation authority approved the recommended discharge on 22 September 1980 and directed the issuance of an UOTHC discharge certificate.

14. The applicant was discharged on 24 September 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-33b(1), for frequent involvement in incidents of a discreditable nature with civil or military authorities. His service was characterized as UOTHC. He completed 11 months and 17 days of net active service this period with 2 years, 7 months, and 27 days of total prior active service.

15. The applicant petitioned the Army Discharge Review Board for consideration of his request for upgrade of his UOTHC discharge. On 18 May 1982, the Board voted to deny relief and determined his discharge was both proper and equitable.

16. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 26 October 1983, the Board voted to deny relief and determined he had failed to present material evidence which would tend to show the existence of error or injustice.

17. The applicant petitioned the ABCMR a second time, requesting upgrade of his UOTHC discharge. On 31 December 2022, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC83-09492 on 26 October 1983.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed traumatic brain injury (TBI) 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 reenlisted into the Regular Army on 30 August 1979 after previous honorable service from 3 January 1977 to 29 August 1979.
- Before a special court-martial on 10 June 1980, at Fort Hood, TX, the applicant was found guilty of one specification of disobeying a lawful order on 18 May 1980; and one specification of unlawfully receiving a stolen camera, the property of a sergeant, on 14 March 1980.

- On 22 August 1980, the applicant accepted NJP for going AWOL from 16 to 17 August 1980, and on 3 September 1980 he accepted NJP for disobeying a lawful order.
- The applicant's commander notified him on 11 September 1980 that he was initiating actions to separate him under the provisions of Army Regulation 635-200, paragraph 14-33, for frequent incidents of a discreditable nature. He cited the applicant's conduct and efficiency were unsatisfactory.
- The applicant was discharged on 24 September 1980 and completed 11 months and 17 days of net active service this period with 2 years, 7 months, and 27 days of total prior 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 he had a TBI as a result of boxing for two years, and the Army did not send him to medical. He stated he went from the Army to two state hospitals. He indicated TBI as an issue or condition related to his request. A neurology medical note from the VA was included, but all VA records will be summarized below. A Training Progress Review Note by a Social Work Officer dated 9 September 1980 showed that the applicant was seen at the request of command because he was being considered for discharge due to recent Article 15. The documentation indicated the applicant accepted responsibility for what he did, but he questioned if he could make it through a recycle with the family problems he was experiencing. The evaluator noted, "he feels he can do the training but would rather not. By the end of the interview the SM was very receptive to being recycled." He goes on to discuss the applicant's "number of good OR's regarding appearance, attitude, and motivation," and he attributed the applicant's impulsiveness and family problems to the cause of his difficulty. The applicant was cleared for action deemed appropriate by the commander. A Report of Mental Status Evaluation dated 16 September 1980 showed that the applicant was mentally responsible, had the capacity to understand the proceedings, and met retention standards. There was no indication of any mental health symptoms noted, but the evaluator remarked, "this is not a valid psychiatric examination." A Report of Medical Examination dated 16 September 1980 showed no indication of any symptoms associated with TBI, and the applicant was deemed medically qualified for separation. A review of ABCMR case AR20220004482 showed that a previous BH Advisor concluded "unknown" and that the documentation did not support that the applicant had a TBI or behavioral health condition. There was insufficient evidence that the applicant was diagnosed with a TBI 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 the applicant is 100% service connected for Neurosis, 30% for Migraine Headaches, 10% for impaired hearing, and 10% for Tinnitus. Documentation from a neurology encounter on 26 January 2024 showed diagnoses of Chronic Traumatic Encephalopathy (CTE), migraine headaches,

and hearing loss. A neuropsychological evaluation was conducted on 20 September 2022, and the results showed some deficits. However, the evaluator stated his attentional disorder “might be related to his boxing, anxiety and depression, educational disadvantages.” Additionally, the CT scan “suggests decline secondary to vascular changes” that “could be” related to boxing in the service.”

e. A Compensation and Pension (C&P) examination was conducted on 23 May 2024 and concluded a diagnosis of Anxiety Disorder due to another medical condition (secondary to TBI) with psychotic features. The documentation referenced a rating decision on 22 December 2022 for 10% service connection for TBI and service personnel records confirming that the applicant was part of a 193rd Infantry Brigade boxing team while in service from 1978-1980. The evaluator noted the applicant’s report of headaches that began while in service and resulted in his discontinuation of boxing, although he continued to do sparring matches when he was in Panama. The applicant also reported symptoms of anxiety, depression, social isolation, memory problems, irritability, and the need for assistance from his brother in managing his finances and monitoring his medication adherence. A Psychological Evaluation dated 7 May 2023, which was conducted at the request of an individual who was assisting the applicant with his VA claim, was also included and showed that the applicant underwent cognitive and personality testing. The applicant’s overall estimate of intellectual functioning was with the “very low range” (IQ=61), which indicated his thinking and reasoning abilities are significantly impaired as compared to individuals in his age group. Additionally, his results showed his verbal abilities to be in the “borderline range,” and his perceptual reasoning abilities also in the “very low range.” Results of a personality measure were valid and showed no evidence that the applicant was unduly defensive or motivated to portray himself in either a positive or negative light, and he had elevations on several clinical scales. In summary, the evaluator attributed the applicant’s headaches, report of cognitive symptoms, anxiety, depression, and impaired functioning to a diagnosis of Neurocognitive Changes from TBI and Anxiety Disorder Related to a Medical Condition.

f. 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 at least partially mitigates his misconduct. According to the separation documents, the behaviors and misconduct for which the applicant was discharged includes the following: failure to obey lawful orders, AWOL, disorderly conduct, failed barracks inspections, absent from bed check, poor response to orders, pass violations, talking in class, failed in-ranks inspection, security violation, absent from unit area, and receiving a stolen camera. Given the applicant’s history of being a boxer and the risk associated with that sport and TBI, it is this BH Advisor’s opinion that these behaviors, which encompass impulsivity and lack of attention to detail, could be the natural sequelae to TBI, but it is impossible to know the severity of his TBI at the time of the misconduct, making it difficult to fully mitigate his discharge.

g. 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 TBI at the time of the misconduct. Documentation by a social worker while in service attributed the applicant's problematic behavior to impulsivity and family problems, which were impacting his motivation to remain in the military, but it was concluded that the applicant had the potential to be a satisfactory soldier. The applicant has utilized the VA since January 2022, and he is 100% service connected for Neurosis. A review of C&P examination documents showed that the evaluator concluded a diagnosis of Anxiety Disorder due to another medical condition (secondary to TBI) with psychotic features, and a psychological evaluation, which included cognitive testing, provided further evidence of significant cognitive impairment associated with a history of TBI.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a TBI secondary to being a boxer for the Army while on active service. Notably, the applicant's aptitude testing upon accession in 1977 met the Army's standards, and his IQ score on cognitive testing done in 2023 provided evidence of degradation in his cognitive abilities over time.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. There is insufficient medical or mental health documentation from the applicant's time in service to conclude he was suffering from a TBI at the time of his misconduct and discharge. A Mental Status Evaluation and a Medical Examination from September 1980 do not show any symptoms or report of any physical or mental health problems. However, one document by a Social Worker does discuss the applicant's impulsivity and his family difficulties, which were contributing to his problematic behavior that ultimately led to his discharge. There is evidence of cognitive impairment from 2022 and 2023 evaluations completed by the VA and as part of his C&P examination process, and the applicant has been diagnosed with Chronic Traumatic Encephalopathy (CTE) by neurology at the VA. CTE is a progressive degenerative brain disease caused by head trauma commonly associated with sports such as boxing. However, CTE can only be definitively diagnosed through post-mortem brain tissue analysis, and because the disease worsens over time, there is no way to determine the degree of impairment at the time of the applicant's misconduct and discharge. However, poor decision-making and impulsivity can be natural sequelae to TBI, and boxing is a known activity that can cause TBI and ultimately CTE. In accordance with Liberal Consideration, it is as likely as not that the applicant was experiencing the effects of a TBI at the time of his misconduct, and his contention is sufficient for the board's consideration of at least partial mitigation.

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the applicant's statement related to TBI injuries related to his boxing, the misconduct leading to the applicant's separation, and the partial mitigation outlined in the medical review, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//SIGNED//

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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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separation – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

c. Chapter 14, paragraph 14-33b(1) provides for the separation of Soldiers when they have patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities. The issuance of a discharge UOTHC is normally considered appropriate for separations under the provisions of this chapter.

4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. 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 post-traumatic stress disorder, 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 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//

