

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240010768

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his characterization of service from under honorable conditions (general) to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 10 February 1989
- DD Form 215 (Correction to DD Form 214), dated 15 August 1995, which shows the Army Achievement Medal with 1st Oak Leaf Cluster was added to his DD Form 214

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 AC94-09980 on 8 March 1995.

2. The applicant states months just prior to his discharge he received a Traumatic Brain Injury from being mugged off base by other service members. He spent several days in an Army hospital. Later it affected him and his performance, leading to his general, under honorable conditions discharge.

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

- a. He enlisted in the Regular Army on 1 October 1985.
- b. He was counseled between 18 February 1988 and 16 August 1988 for:
 - uniform appearance and standards
 - leaving his room unsecure

- overall performance
- not being recommended for the sergeant (SGT)/E-5 board
- missing formations

c. On 23 May 1988, as a result of uttering three or more dishonored checks, his checking cashing privileges were suspended for an indefinite period.

d. He accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on:

- 16 August 1988 for missing formation on 15 August 1988 and 16 August 1988
- 18 August 1988 for missing formation on 18 August 1988

e. He was counseled between 23 August 1988 and 11 January 1989 for:

- promotion status to SGT
- overall performance
- not being recommended for promotion to SGT in the primary zone
- room appearance, personal appearance, job performance/knowledge, and promotion
- cleanliness and security of his personal items
- security violation and standards
- failure to follow instructions and making untrue statements to a noncommissioned officer
- reported out of ranks during an announced 0830 formation
- failure to return to his appointed place of duty

f. He accepted nonjudicial punishment on 19 January 1989, under the provisions of Article 15, UCMJ for:

- on or about 11 January 1989, derelict in the performance of his duties by not having his uniform prepared for the next duty day
- on or about 10 January 1989, derelict in the performance of his duties by not returning to the motor pool after completing his physical appointment
- on or about 6 January 1989, failing to go at the time prescribed to his appointed place of duty, to wit: accountability formation

g. On 27 January 1989, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12b, for patterns of misconduct. He acknowledged receipt on 1 February 1989. The commander listed the following reasons for the proposed action:

- one Article 15 and two summarized Article 15s for violation of Articles 86 (absence without leave) and 92 (failure to obey order or regulation)
- continuous derogatory counseling statements
- bad checks
- letters of indebtedness

h. 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 effect of any action he took in waiving his rights.

i. His chain of command recommended approval, with a general, under honorable conditions discharge.

j. On 3 February 1989, the separation authority approved the separation, directed he receive a general, under honorable conditions discharge, and waived the requirement for rehabilitative transfer.

k. Accordingly, he was discharged on 10 February 1989, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct – pattern of misconduct, and his service was characterized as general, under honorable conditions. His DD Form 214 shows he completed 3 years, 4 months, and 10 days of net active service this period.

4. On 26 February 1990, the Army Discharge Review Board (ADRB) denied the applicant's request for an upgrade. The ADRB determined that the applicant was properly and equitably discharged.

5. On 4 August 1994, the ADRB denied the applicant's request for an upgrade of his discharge. However, the Board determined that the applicant's narrative reason for discharge represented a significant enhancement of rights and voted to change the narrative reason on his DD Form 214 to misconduct. The Board directed that the narrative reason for separation be changed from misconduct – patterns of misconduct to misconduct.

6. On 8 March 1995 and in ABCMR Docket Number AC94-09980, the Board denied the applicant's request and determined that the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced traumatic brain injury (TBI) that mitigates his misconduct. 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 01 October 1985; 2) The applicant received multiple and ongoing counseling statements between 18 February 1988 and 11 January 1989 for infractions such as: A) uniform and room appearance and standards, B) leaving his room unsecure, C) overall performance, D) missing formations, E) lack of recommendations for promotion/current status, F) security violations and breaking of standards, and G) failure to return to his appointed place of duty; 3) On 23 May 1988, his check cashing privileges were suspended indefinitely due to signing 3 or more dishonored checks; 4) On 16 and 18 August 1988, he received NJP for missing a total of 3 formations; 5) The applicant also accepted NJP between 06 and 11 January 1989 for 2 counts of being derelict in his performance of his duties and one count of failing to go to his place of duty at the time prescribed; 6) The applicant was discharged on 10 February 1989, AR 635-200, paragraph 14-12b, by reason of misconduct – pattern of misconduct. His character of service was general, under honorable conditions. He completed 3 years, 4 months, and 10 days net active service. 7) The applicant previously applied to the ADRB on 26 February 1990, 04 August 1994, and 08 March 1995. The applicant's discharge was found to be proper and equitable on each occasion, however, the Board determined that the applicant's narrative reason for discharge should be changed to misconduct on 04 August 1994.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military and medical service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced a TBI resulting from a fight while on active duty that impacted his discharge. There is insufficient evidence the applicant reported or was diagnosed with a TBI while on active service. The applicant underwent a mental status examination by an active-duty medical provider who cleared the applicant from a psychiatric perspective for chapter procedures. No additional medical or mental health documentation was provided/available from his time in service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected TBI. The applicant has not been diagnosed with a service-connected medical or mental health condition, and he does not receive service-connected disability 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 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 asserts he experienced a TBI, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant has been diagnosed with a TBI during active service. The applicant did engage in misconduct including a failure to maintain standards, missing formations, and poor performance that could be determined to be erratic behavior. Erratic behavior can be a natural sequelae of TBI. However, the presence of misconduct is not sufficient evidence of a TBI. Yet, the applicant contends he experienced TBI while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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. Based upon the pattern of misconduct within the applicant's record, the current characterization of service (General), and the lack of mitigation for the misconduct leading to the applicant's separation as outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting an upgrade of 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//

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

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. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

2. 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.

3. 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.

4. 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.

5. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//