

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010848

APPLICANT REQUESTS: an upgrade of his characterization of service

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 he has been working as a contractor since 2007. He is currently working in Naples, Italy and was just informed as to why he cannot work as a GS employee. He was told that due to his DD Form 214 (Certificate of Release or Discharge from Active Duty) he cannot hold a government position. He would very much like to apply for a GS position in Italy and remain permanently. He is not looking to file any claims for any past medical issues/problems from his past military duties. He just wants to be able to have a chance for a better job and stop jumping all around the world to work.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 16 August 1984.
 - b. He accepted nonjudicial punishment on 22 January 1986 for being derelict in the performance of his duties by willfully failing to be in the guard house as it was his duty to do, on or about 4 January 1986. His punishment included reduction to private/E-3, 14 days of extra duty, forfeiture of \$100.00, suspended for 90 days.
 - c. He reenlisted on 3 April 1987 for a period of five years.

d. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 19 November 1987 for:

- Charge I, one specification of on or about 3 September 1987, conspiring with specialist (SPC) W_ to wrongfully damage private property
- Charge II:
 - Specification 1: on or about 3 September 1987, willfully and wrongfully damaging with a tire iron, a 1978 Chevrolet automobile by shattering the driver's door window and attempting to pry the trunk open. The amount of said damage being more than \$100.00.
 - Specification 2: on or about 3 September 1987, willfully and wrongfully damaging with his foot and a tire iron a 1976 Datsun automobile by shattering the rear hatch window and prying a portable stereo from the dash, in the amount of more than \$100.00.
 - Specification 3: on or about 3 September 1987, willfully and wrongfully damaging with a tire iron a 1976 Toyota automobile by shattering a rear window and attempting to pry the trunk open. The amount of said damage being more than \$100.00.
 - Specification 4: on or about 3 September 1987, willfully and wrongfully damaging with a tire iron a 1976 Ford truck by shattering a passenger side wing window. The amount of said damage being less than \$100.00.
 - Specification 5: on or about 3 September 1987, willfully and wrongfully damaging with a tire iron a 1974 Ford truck by shattering a passenger side window and smashing the passenger side of the dash. The amount of said damage being more than \$100.00.
 - Specification 6: on or about 3 September 1987, willfully and wrongfully damaging with a tire iron a 1985 Chevrolet truck by shattering a passenger side window and side view mirror, the amount of damage being more than \$100.00.
 - Specification 7: on or about 3 September 1987, willfully and wrongfully damaging with a knife a 1987 Pontiac automobile by slashing three tires and scratching the exterior paint, the amount of said damage being more than \$100.00.
- Charge III:
 - Specification 1: on or about 3 September 1987, stealing 30 cassette tapes of a value of about \$6.00 each, one portable two-way radio of a value of about \$50.00, one 112-piece tool set of value of about \$79.00, and one pair of sunglasses of a value of about \$95.00

- Specification 2: on or about 3 September 1987, stealing 10 cassette tapes of a value of less than \$100.00 each, and a portable stereo of a value of less than \$100.00
- Specification 3: on or about 3 September 1987, stealing one portable citizens band two-way radio valued at less than \$100.00
- Specification 4: on or about 3 September 1987, stealing one portable AM/FM/cassette stereo of a value of less than \$100.00 and one portable two-way radio of a value of less than \$100.00
- Specification 5: on or about 3 September 1987, stealing one set of Sony brand stereo headphones of a value of about \$60.00, one Schrade brand knife of a value of about \$35.00, and one tent of a value of about \$149.00
- Specification 6: on or about 3 September 1987, stealing one box of air gun pellets of a value of about \$3.00, 16 carbon dioxide cartridges of a value of about \$8.50, two portable car stereo speakers of a value of about \$2.00 each, and one microscope of a value of about \$30.00

e. On 1 December 1987, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service, in lieu of court-martial.

f. The chain of command recommended approval, once restitution to the victims had been made, and that he be given an under other than honorable conditions discharge.

g. On 31 March 1988, the separation authority approved the recommended discharge, directed he be reduced to the lowest enlisted grade, and issued an under other than honorable conditions discharge.

h. Accordingly, he was discharged under other than honorable conditions on 7 April 1988. His DD Form 214 shows he completed 3 years, 7 months, and 22 days of net active service this period.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing 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 requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected OMH on his application as related to his request but did not indicate any BH condition or diagnosis.

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:

- Applicant enlisted in the Regular Army on 16 August 1984 and reenlisted on 3 April 1987.
- He accepted nonjudicial punishment on 22 January 1986 for being derelict in the performance of his duties by willfully failing to be in the guard house as it was his duty to do, on or about 4 January 1986.
- DD Form 458 (Charge Sheet) shows court martial charges were preferred on 19 November 1987 for:
 - Charge I, one specification of on or about 3 September 1987, conspiring with specialist (SPC) W_ to wrongfully damage private property.
 - Charge II: seven specifications of on or about 3 September 1987, willfully and wrongfully damaging several automobiles.
 - Charge III: six specifications of stealing.
- Applicant was discharged on 7 April 1988. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His service was characterized as UOTHC with separation code JFS and RE code 4.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he has been working as a contractor since 2007. He is currently working in Naples, Italy and was just informed he cannot work as a GS employee. He was told that due to his DD Form 214 he cannot hold a government position. He would very much like to apply for a GS position in Italy and remain permanently. He is not looking to file any claims for any past medical issues/problems from his past military duties. He just wants to be able to have a chance for a better job and stop jumping all around the world to work.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment for any behavioral health condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. However, regardless of BH condition the applicant's misconduct is unlikely to be mitigated.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis. However, regardless of BH condition, his misconduct of theft and destruction of property is not part of the history or natural sequelae of any BH condition and is unlikely to be mitigated.

h. Per Liberal Consideration guidelines, his selection of OMH on his application is sufficient to warrant consideration by the Board.

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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official based on the information available, it was the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. However, regardless of BH condition the applicant's misconduct is unlikely to be mitigated.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis. However, regardless of BH condition, his misconduct of theft and destruction of property is not part of the history or natural sequelae of any BH condition and is unlikely to be mitigated.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of stealing and willingly damaging other people's personal property. The applicant provided no character letters of support that attest to his post service achievements for the Board to consider for clemency. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of his under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

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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.

ADMINISTRATIVE NOTES

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry

- IMMEDIATE REENLISTMENT
- CONTINUOUS HONORABLE SERVICE 840816 - 870402

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 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

3. 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. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

c. 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.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the 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 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.

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//