

IN THE CASE OF: ██████████

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010959

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter explained below (available for the Board's review in supporting documents)
- DD Form 214 (Report of Separation from Active Duty)
- (2) Support letters from his elder at church and his sister discussing:
 - his past
 - changes in his life
 - being a servant in the church
 - life before the military
 - time in service
 - mother's heart issues while he was serving
 - restaurant management career

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 would like his discharge to be changed from under other than honorable conditions to under honorable conditions. He was only 17 when he joined, and his mother was not happy, and she never signed for him. He was never advised what his rights were. In a self-authored letter, he describes:

- His service and duties in Korea
- Being told he was being shipped to war
- Drinking and drugging with the wrong group of guys

- Escaping custody and breaking his arms
- Being an ordained minister now
- Sorrow for what he did

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

a. He enlisted in the Regular Army on 22 March 1974.

b. He received non-judicial punishment (NJP) on 30 June 1974, for on or about 27 June 1974, without authority, fail to go at the time prescribed to his appointed place of duty (bivouac site).

c. He served overseas on Korea from 14 August 1974 until 22 July 1975.

d. He received NJP on/for:

- 18 October 1974/on or about 4 October 1974, without authority, fail to go at the time prescribed to his appointed place of duty (weapons firing); he was reduced to private/E-2
- 19 December 1974/be absent without leave (AWOL) on or about 11 December 1974, until on or about 12 December 1974
- 11 April 1975/ be AWOL from on or about 5 April 1975, until on or about 8 April 1975

e. His DA Form 2-1 (Enlisted Qualification Record – Part II) also shows in block 18 (Appointments and Reductions) he was reduced to private/E-1 on 7 July 1975.

f. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged on 6 November 1975, for unfitness under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5a (1). His DD Form 214 also shows he completed 1 year, 3 months, and 27 days net active service this period. He had 108 days lost time from 5 – 7 April 1975, 11 – 17 June 1975, 9 – 27 July 1975, 1 – 8 August 1975, and 27 August 1975 – 5 November 1975.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within the 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. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he was experiencing mental health conditions which mitigate 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 22 March 1974; 2) The applicant accepted non-judicial punishments (NJP) between October 1974-April 1975 for failing to be at his place of duty and being AWOL three times; 3) The applicant's record is void of the complete facts and circumstances that led to his separation; 4) The applicant was discharged on 6 November 1975, for unfitness under the provisions of AR 635-200, paragraph 13-5a (1). He completed 1 year, 3 months, and 27 days net active service this period. He had 108 days lost time from 5 – 7 April 1975, 11 – 17 June 1975, 9 – 27 July 1975, 1 – 8 August 1975, and 27 August 1975 – 5 November 1975.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition. The applicant started his engagement with behavioral health services at the VA in 2004, and he has been diagnosed and treated for non-service-connected Major Depression.

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 mental health 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 mental health conditions, which mitigate his misconduct. The applicant was diagnosed with non-service-connected Major Depression by the VA in 2004.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, which could be a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence surrounding the complete events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone 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 request, supporting documents, evidence in the records, and published Department of Defense 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 separated for unfitness due to multiple nonjudicial punishments and for being AWOL for a combined total of 108 days. The Board determined that there was no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted 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 asserts he experienced mental health conditions, which mitigate his misconduct. The applicant was diagnosed with non-service-connected Major Depression by the VA in 2004.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, which could be a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence surrounding the complete events and circumstances which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

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 correction of the records of the individual concerned.

8/13/2025

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CHAIRPERSON

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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.

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 13 of the regulation in effect at the time established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military

service. In pertinent part, it provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned.

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

//NOTHING FOLLOWS//