

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240011026

APPLICANT REQUESTS: an upgrade of his discharge under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1553) with continuation sheet
- 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 he was proud to be a Soldier. The following traumatic events deteriorated his mental health and prevented him from returning to his active-duty station from emergency leave authorized by the American Red Cross: his near-death experience from an airborne training exercise that resulted in major surgery, his spouse's infidelity with men on the installation, and the horrible murders of four family members in one night – all within 1 year. He responsibly turned himself in to Fort Sill, OK, where he received the current service characterization.

3. A review of the applicant's service records show:

- a. He enlisted in the Regular Army on 5 November 1998 for a period of 4 years.
- b. Three DA Forms 4187 (Personnel Action) reflect the applicant's duty status changed as follows:
 - 18 October 2000 from Present for Duty (PDY) to Absent without Leave (AWOL)
 - 17 November 2000 from AWOL to Dropped from Rolls (DFR)

- 1 February 2001 from DFR to PDY/Returned to Military Control

c. The DD Form 616 (Report of Return of Absentee) shows his absence from his unit at Fort Bragg, NC, began on 18 October 2000 and he surrendered to military authorities at Fort Sill, OK, on 1 February 2001.

d. The DD Form 458 (Charge Sheet) shows court martial charges were preferred against him on 6 February 2001 for violation of Article 86 (AWOL), Uniform Code of Military Justice, for being AWOL from his organization on 18 October 2000 and remaining absent until on or about 1 February 2001.

e. On 9 February 2001, he voluntarily requested discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He stated, in part: " By submitting this request for discharge, I acknowledge that I understand the elements of the offense charged and am guilty of the charge against me or of (a) lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service."

f. His commander recommended approval and issuance of a discharge under other than honorable conditions.

g. On 7 November 2001, the separation authority approved the applicant's separation and directed his reduction to the rank/grade of private/E-1 and issuance of a discharge under other than honorable conditions.

h. He was discharged under other than honorable conditions on 30 November 2001. He completed 2 years, 7 months, and 11 days of net active service during this period with lost time under the provisions of Title 10, U.S. Code, section 972, from 18 October 2000 to 31 March 2001 (165 days). He was awarded or authorized the following:

- Army Achievement Medal
- Army Service Ribbon
- Parachutist Badge

4. There is no evidence indicating 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 may 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 other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition 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 5 November 1998.
- The applicant was AWOL from 18 October 2000 to 1 February 2001.
- The Charge Sheet shows court martial charges were preferred against him on 6 February 2001 for violation of Article 86 (AWOL), UCMJ, for being AWOL from his organization on 18 October 2000 and remaining absent until 1 February 2001. He voluntarily requested discharge in lieu of trial by court-martial.
- The applicant was discharged on 30 November 2001 and completed 2 years, 7 months, and 11 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 he experienced traumatic events that impacted his mental health and prevented him from returning after his emergency leave. He stated he had a near-death experience from an airborne training exercise, his spouse committed adultery, and four of his family members were murdered, and all of these events happened in one year. The application did not contain any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a 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 DoD medical records indicating the applicant sustained a right ankle fracture in a parachute landing on 2 March 2000. He was admitted for surgery and discharged the following day. The applicant's VA records showed he engaged in the Veterans Justice Outreach (VJO) program in July 2024, and he utilized those services through February 2025. A community health summary showed the applicant had active prescriptions for three antidepressant medications, but information about symptoms or diagnoses was not available for review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. Records from the DoD showed a parachuting accident resulting in an ankle fracture in March 2000, but there were no records related to mental health. Documentation in JLV showed the applicant had three active prescriptions for antidepressant medication, but there were no symptoms or diagnoses available for review.

(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. He reported a parachuting accident, his wife's infidelity, and the murders of four family members as the traumatic events, which occurred within one year.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant asserts he experienced three very stressful events within one year, and there was evidence that he was involved in a parachuting accident, which resulted in an ankle fracture requiring surgery. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition 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 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 charged with being AWOL from 18 October 2000 and remaining absent until 1 February 2001, punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following 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 at the time of the misconduct.

(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. He reported a parachuting accident, his wife's infidelity, and the murders of four family members as the traumatic events, which occurred within one year.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service.

3. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



X

//SIGNED//

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. Title 10, U.S. Code, section 1556, 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets 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 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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, fraudulent entry, security reasons, or in lieu of trial by court-martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

d. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

e. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) 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 in lieu of trial by court-martial. 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 in lieu of trial by court-martial. 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.

4. 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.

//NOTHING FOLLOWS//