

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2025

DOCKET NUMBER: AR20240011058

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service to honorable

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), 19 May 1994
- Department of Veterans Affairs (VA) Progress Notes, 30 November 2023
- VA Contact Brief, 25 July 2024
- VA Form 21-4138, Statement in Support of Claim, 25 July 2024

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 notes his application to the Board is related to Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health, and he states:
 - a. He was not found guilty of any wrongdoing, and he would have otherwise finished his second tour of duty.
 - b. He has been trying to have the characterization of his service upgraded since 2006; he has prostate cancer and other disabilities.
3. The applicant enlisted in the Regular Army, for a period of 4 years, on 26 July 1989.
4. His DA Form 2-1, Personnel Qualification Record, shows:

- he deployed to Saudi Arabia from 30 December 1990 to 3 May 1991, a period of 4 months
 - the highest rank/grade he held was specialist (SPC)/E-4, with a date of rank of 1 April 1991
 - he was awarded the Army Good Conduct Medal, the Army Commendation Medal, and the Army Achievement Medal
5. On 1 September 1992, he extended his initial enlistment for a period of 5 months.
 6. On 23 June 1993, he reenlisted in the Regular Army for a period of 4 years.
 7. His record is void of a separation packet, therefore the complete facts and circumstances surrounding his discharge are unknown.
 8. His record contains a duly constituted DD Form 214 which shows:
 - he completed 4 years, 9 months, and 19 days of net active service this period
 - he was discharged in the rank/grade of private (PV1)/E-1, with a date of rank of 12 May 1994
 - item 18 (Remarks) does not contain an entry pertaining to his reenlistments this period, it does not show whether he completed his first full term of enlistment, nor does it reflect his continuous honorable service (the period of his first enlistment)
 - he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial
 - he received an under other than honorable conditions characterization of service
 - he received a separation code of "KFS" and a reentry code of "3"
 9. There is no indication the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his characterization of service within that Board's 15-year Statute of Limitations.
 10. He provides a VA Progress Note, dated 30 November 2023, which notes an appointment was cancelled after trying to contact the applicant. Additionally, there is a handwritten note on this document, which states, "Tuskegee VAMC want[s] [to] give me treatment."
 11. He provides a VA contact brief which lists his point of contact information.
 12. He provides a VA Form 21-4138, which contains the below statement:

PLEASE BE ADVISED THAT I SERVE IN THE KUWAIT WAR IN 1989, MY UNIT WAS FIELD ARTILLERY ALPHA BATTERY 229. I BLEW UP TANKS, PEOPLE AND TRUCKS. I WAS THERE FROM JANUARY TO MAY 1990. AS A YOUNG

MAN I WITNESSED A LOT OF DEATH. I SAW BODIES BURNED BLACK. I SAW BODIES WITH MISSING PARTS, HEADS AND LEGS BLOWN OFF. AND YOU KNOW WHO DID THIS? I DID WHEN I WAS ORDERED TO FIRE MY MISSILES. ATERWARDS, WHEN THE WAR WAS OVER, I DID NOT FEEL THE SAME. I WAS NOT THE SAME PERSON. I COULD NOT SLEEP AND STARTED DOING ALCOHOL AND DRUGS MORE FREQUENTLY. I USED THE DRUGS TO FORGET MY EXPERIENCE IN KILLING PEOPLE. TO THIS DATE I CAN STILL REMEMBER GOING TO KUWAIT AND IT IS NOT A GOOD MEMORY. I STARTED NOT TO CARE ABOUT MYSELF AND MY MILITARY CAREER AND NO ONE WILLING TO HELP OR CARED. NO ONE TRYED TO HELP ME. ALL THAT THEY WANTED TO DO WAS GET ME OUT OF THE ARMY WITHOUT TREATMENT. I WOULD LIKE TO REQUEST THAT MY OTHER THAN HONORABLE BE CHANGE TO HONORABLE SO I CAN GET TREATMENT FOR PTSD AT TUSKEGEE VAMC. THIS CHANGE IN MY DISCHARGE WILL HELP ME TO START HEALING.

MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced a traumatic brain injury (TBI) and mental health conditions including PTSD 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 26 July 1989; 2) The applicant deployed to Saudi Arabia from 30 December 1990-03 May 1991; 3) The applicant's record is void of a separation packet, and the complete facts and circumstances surrounding his discharge are unknown; 3) The applicant was discharged on 19 May 1994, Chapter 10-in lieu of trial by court-martial. His service was characterized as under other than honorable conditions.
2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and VA medical documentation and other VA documentation provided by the applicant were also reviewed.
3. The applicant asserts he experienced TBI and mental health conditions including PTSD while on active service which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a TBI or a mental health condition including PTSD, while on active service.
4. A review of JLV provided evidence the applicant began to engage with VA in 2023. There is insufficient evidence the applicant has been diagnosed with a service-connected TBI or mental health condition including PTSD by the VA. The applicant also does not receive any service-connected disability.

5. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health condition including PTSD while on active service. In addition, there is insufficient evidence surrounding the 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 or experience.

6. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health conditions including PTSD while on active service. In addition, there is insufficient evidence surrounding the 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 or experience. Yet, the applicant contends he experienced a TBI and mental health conditions while on active service, which mitigate his misconduct, and his contention is sufficient for consideration per the Liberal Consideration Policy.

b. Did the condition exist, or experience occur during military service? N/A.

c. Does the condition experience actually excuse or mitigate the misconduct? N/A.

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. The applicant's records are void of documentation detailing the circumstances surrounding his separation. His DD Form 214 reflects discharge under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.

2. The Board reviewed the medical advisory opinion, which assessed whether the applicant was experiencing a TBI or mental health condition, including PTSD, during his period of active service. The applicant's self-reported statements were also considered. Chapter 10 of AR 635-200 authorizes discharge in lieu of trial by court-martial when a Soldier faces charges for offenses punishable by a punitive discharge. The applicant's DD Form 214 confirms separation under this provision. The medical advisory concluded

there is insufficient evidence beyond self-report to substantiate that the applicant was experiencing TBI or a mental health condition, including PTSD, during active service. No corroborating medical documentation or official records were presented to support the applicant's claims. The absence of documentation detailing the separation limits the Board's ability to reassess the circumstances. The applicant's submissions did not establish error or injustice in the record. Therefore, the Board denied relief.

3. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing a TBI or mental health conditions including PTSD while on active service. In addition, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he experienced a TBI and mental health conditions while on active service, which mitigate his misconduct, and his contention is sufficient for consideration per the Liberal Consideration Policy.

b. Did the condition exist, or experience occur during military service? N/A.

c. Does the condition experience actually excuse or mitigate the misconduct? N/A.

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.

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. Army Regulation 635-200, in effect at the time of the applicant's service, set policies, standards, and procedures to provide for the orderly administrative separation of Soldiers for a variety of reasons.
 - 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 issued to a Soldier 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, homosexual conduct, security reasons, or for the good of

service. An other than honorable conditions discharge will be directed only by one of the following, in part: A commander exercising general court-martial jurisdiction; and/or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge for the good of the service under the provisions of chapter 10 when delegated authority to approve such requests for discharge.

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:

(1) A Soldier who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM, 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.

(2) Commanders will insure that a Soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the Soldier concerning: the elements of the offense or offenses charged; burden of proof; possible defenses; possible punishments; provisions of this chapter; requirements of voluntariness; type of discharge normally given under the provisions of this chapter; rights regarding the withdrawal of the Soldier's request; loss of Veterans Administration benefits; prejudice in civilian life because of the characterization of the discharge; and consulting counsel may advise the Soldier regarding the merits of this separation action and the offense pending against the Soldier. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences.

(3) A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate, if such is merited by the Soldier's overall record during the current enlistment.

3. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, provides the following guidance for completing item 18 (Remarks) of the DD Form 214:

a. Enter a list of enlistment periods for which a DD Form 214 was not issued
Example: Immediate reenlistments this period: 761210–791001; 791002–821001.

b. This version of the regulation does not contain a provision for adding continuous honorable active service nor does it have a provision for indicating whether a Soldier completed their first full term of service.

4. Army Regulation 635-8 (Separation Processing and Documents, currently in effect, provides the following guidance for completing the mandatory entries in item 18 (Remarks) of the DD Form 214:

a. “SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE.”

b. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter “IMMEDIATE REENLISTMENTS THIS PERIOD” and specify inclusive dates for each period of reenlistment.

c. 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.

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 (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 provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of 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//