

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20240011114

APPLICANT REQUESTS: reconsideration of his prior request for upgrade of his discharge under other than honorable conditions

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement

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 AR1999018182 on 10 March 1999.

2. The applicant states:

a. He is asking to have his discharge changed to honorable because he didn't know what he was doing, and he needs medical insurance for substance abuse.

b. He was a young impressionable man at the time of his entry into the military and unsure about what he wanted to do with his life. When he entered the Army, he was excited, but afraid because he had never been away from his family and the city of Chicago. It was a big change for him, and he didn't know what to expect.

c. He was only 17 years old and didn't understand what he was doing. During his tour, he became involved with the wrong folks who introduced him to drugs and took advantage of him. He started using and got himself into trouble, eventually receiving an other than honorable discharge.

d. Back then, he was so afraid he was going to be put in jail in Germany for the rest of his life. To this day, he still struggles with addiction problems. Since his discharge, he has been able to maintain employment even while battling addiction issues. This has caused him a lot of stress physically and mentally because he has developed several

health issues, including chronic obstructive pulmonary disease (COPD), hypertension (HTN), and a heart condition.

e. He is being honest about what he experienced in the military as a young African American male and is seeking assistance and consideration in obtaining an upgrade to his other than honorable conditions discharge. He marked the box on his application indicating other mental health issues are related to his request.

3. The applicant enlisted in the Regular Army on 29 November 1979, at the age of 17.

4. A U.S. Army Criminal Investigation Division (CID) Report shows an investigation revealed the applicant was titled with wrongful possession and sale of hashish for selling approximately 7.2 grams of hashish with a street value of \$144.00 to a Military Police Investigator (MPI) at Coleman Barracks in Mannheim, Germany on 20 February 1981. Laboratory analysis confirmed the pieces were marijuana in hashish form.

5. An additional CID Report shows the applicant again sold four pieces of tinfoil containing hashish in the amount of \$100.00 to an MPI at 7th Signal Brigade in Mannheim, Germany on 1 April 1981. Laboratory analysis confirmed the pieces were marijuana in hashish form.

6. A Bad Conduct Discharge (BCD) Special Court-Martial Data Sheet, 2 June 1981, shows:

- the applicant's age at the time was 19
- his prior nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) was on 29 April 1981, for larceny of a pair of sunglasses from the Post Exchange
- the facts show he sold 6.73 grams of hashish to an MPI on 20 February 1981 and again sold 10.13 grams of hashish to the same MPI on 1 April 1981
- the recommendations of the unit commander, Special Court-Martial Convening Authority, Trial Counsel, and the Staff Judge Advocate were all BCD

7. Headquarters, 21st Support Command Court-Martial Convening Order Number 123, 2 June 1981, shows the applicant was to be arraigned and tried by special court-martial and the constitution of the court was named, including the military judge, members, and counsels.

8. On 2 June 1981, the applicant voluntarily requested discharge for the good of the service in lieu of court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, because charges were preferred against him under the UCMJ which authorize the imposition of a BCD or dishonorable discharge. The charges were wrongful possession, sale, and transfer of

marijuana in the hashish form on 20 February 1981 and on 1 April 1981. He indicated he made this request of his own free will, was guilty of the charges, was advised of the implications of his request, was afforded the opportunity to consult with counsel, that he may be discharged under other than honorable conditions, and that he may be ineligible for many or all benefits administered by the Army and the Veterans Administration. He did not submit statements in his own behalf.

9. On 2 June 1981, the applicant's defense counsel recommended approval of his request for discharge under the provisions of Army Regulation 635-200, chapter 10, for the good of the service.

10. On 10 June 1981, the applicant's immediate commander recommended approval of his request for discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10 with an other than honorable conditions discharge.

11. On 11 June 1981, the applicant's brigade commander recommended approval of the applicant's request for discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10 with an other than honorable conditions discharge certificate.

12. On 17 June 1981, the approval authority directed the applicant's discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10 with an other than honorable conditions discharge. He also directed his reduction to the lowest enlisted grade.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given an under other than honorable conditions discharge on 13 July 1981, under the provisions of Army Regulation 635-200, chapter 10, due to conduct triable by court-martial, with corresponding Separation Code JFS. He was credited with 1 year, 7 months, and 15 days of net active service and his rank/grade is shown as private one (PV1)/E-1.

14. The applicant previously applied to the ABCMR in September 1997, requesting discharge upgrade and on 10 March 1999, the Board denied his request, determining the evidence submitted did not demonstrate the existence of a probable error or injustice

15. On 7 April 2025, the Army Review Boards Agency (ARBA) requested the applicant provide copies of his medical documentation supporting his mental health issues, but he did not respond.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for upgrade of his discharge under other than honorable conditions (UOTHC). On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 29 November 1979, 2) a Special Court-Martial data sheet dated 02 June 1981 shows the following: a prior Article 15 on 29 April 1981 for larceny of a pair of sunglasses from the Post Exchange. The facts show he sold 6.73 grams of hashish to an MPI on 20 February 1981 and again sold 10.13 grams of hashish to the same MPI on 1 April 1981, 3) On 2 June 1981, the applicant voluntarily requested discharge for the good of the service in lieu of court-martial under the provisions of AR 635-200, chapter 10. The charges were wrongful possession, sale, and transfer of marijuana in the hashish form on 20 February 1981 and on 1 April 1981, 4) the applicant was discharged on 13 July 1981 under the provisions of AR 635-200, Chapter 10 due to conduct triable by court-martial, with a corresponding separation code of JFS, 5) the applicant's previous petition for relief to the ABCMR was denied on 10 March 1999 as it was determined that the evidence submitted did not demonstrate the existence of a probable error or injustice.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. There is no documentation in JLV showing the applicant is service-connected through the VA for any conditions. There are no VA medical records available for review. It is of note that his UOTHC discharge renders him ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

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 applicant was charged with wrongful possession, sale, and transfer of marijuana. 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. The Board concurred with the medical advisor's review finding:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was

related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

As a result, based upon the misconduct leading to the applicant's separation and the findings outlined in the medical review, the Board found the characterization of service issued was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 amendment of the ABCMR decision rendered in Docket Number AR1999018182 on 10 March 1999.

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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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

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 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 grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides that a member who had committed an offense or offenses for which the authorized sentence included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

c. 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.

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

5. 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.

//NOTHING FOLLOWS//