

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011264

APPLICANT REQUESTS: in effect, upgrade his under other than honorable conditions discharge to an honorable character of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Two DD Forms 149 (Application for Correction of Military Record)

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 requests the Board upgrade his general discharge under honorable conditions.
 - All available service records indicate he received an under other than honorable conditions separation
 - His record is void of any action taken to upgrade him to a general discharge, and the applicant offers no supporting documentation
3. The applicant states:
 - During his military service, he tried the best he could, but he was suffering from psychological issues that stemmed from his childhood; he stole from the Post Exchange (PX) when he did not need to
 - He acknowledges that he enjoyed serving in the military, and he wishes he could have continued his career just as his father had done
 - On his application, the applicant has checked the box for "Other Mental Health" issues; on 4 March 2025, the Army Review Boards Agency asked the applicant to provide supporting medical documentation for his behavioral health issues; he did not respond
4. The applicant's service record shows the following:

- On 23 November 1981, the applicant enlisted into the Regular Army for 3 years; after completing initial entry training, the Army awarded him military occupational specialty 11B (Infantryman); as his first duty assignment, orders assigned him to an infantry battalion at Fort Lewis, WA, and he arrived, on 22 March 1982
- Effective 1 May 1982, his leadership promoted him to private (PV2)/E-2
- On 25 May 1982, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for having stolen PX property valued at \$7.64
- On 9 August 1982, the applicant's unit reported him as absent without leave (AWOL); four days later, on 13 August 1982, Fort Lewis military police (MP) apprehended the applicant and placed him in confinement; on 20 August 1982, the applicant was released back to his unit
- On 3 September 1982, the applicant's company commander-initiated bar to reenlistment action against him; the commander cited the applicant's previous NJP; 10 dishonored checks, totaling over \$1,000 and an unpaid hotel bill; substandard maintenance of his room; and absences from duty/failure to obey
- On 8 September 1982, the applicant accepted NJP for failing to report for formation and writing a dishonored check; punishment included reduction to private (PV1)/E-1
- On 9 September 1982, the applicant's battalion commander approved the bar to reenlistment action
- On 21 September 1982, the applicant's unit reported him as AWOL, and, on 20 October 1982, dropped him from unit rolls
- On 27 July 1983, the applicant surrendered himself to military authority at Fort Sam Houston, TX; orders transferred him to the Personnel Control Facility (PCF) at Fort Sill, OK, and he arrived, on or about 29 July 1983
- On 1 August 1983, the PCF preferred court-martial charges against the applicant for having been AWOL, from 21 September 1982 to 27 July 1983 (309 days)
- On 1 August 1983, after consulting with counsel, the applicant requested separation under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - In his request, the applicant affirmed no one had coerced him to make this decision and he was making this request under his own free will
 - He acknowledged he was guilty of the charge preferred against him and elected not to submit statements in his own behalf
- On 3 August 1983, the PCF placed the applicant on excess leave, and he departed Fort Sill that same date
- On 22 August 1983, the separation authority approved the applicant's request and directed his under other than honorable conditions discharge; on 1 September 1983, orders separated the applicant accordingly

- The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 months and 21 days of his 3-year enlistment contract, with two periods of lost time; the form additionally reflects the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon and two marksmanship qualification badges
 - Item 25 (Separation Authority) – Chapter 10, AR 635-200
 - Item 26 (Separation Code) – "KFS"
 - Item 27 (Reenlistment (RE) Code) – "RE-3B"
 - Item 28 (Narrative Reason for Separation) – "For the Good of the Service – In Lieu of Court-Martial"

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR to request an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions due to experiences prior to his enlistment that impacted him during his time in service and mitigates 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 23 November 1981; 2) On 25 May 1982, he accepted NJP for stealing property from the PX; 3) The applicant was documented as to have gone AWOL between 9 August 1982 and 13 August 1982; 4) On 3 September 1982, the applicant was barred from reenlistment due to the applicant's previous NJP including: 10 dishonored checks, an unpaid hotel bill, substandard maintenance of his room, going AWOL, and failure to follow orders; 5) On 1 August 1983, court-martial charges were preferred against the applicant for going AWOL, from 21 September 1982 to 27 July 1983 (309 days); 6) The applicant was discharged on 1 September 1983, Chapter 10. His character of service was under other than honorable conditions. He completed 10 months and 21 days of net active service.

b. 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) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced other mental health conditions incurred prior to military service that impacted him during his time in service and mitigates his misconduct. There is insufficient evidence that the applicant reported or was diagnosed any mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability for a mental health condition at this time.

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, which mitigates his misconduct. The applicant asserts he experienced mental health conditions while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions while on active service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing other mental health conditions stemming from childhood that impacted him at the time of his active service which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing other mental health conditions that stemmed from childhood at the time of his active service which mitigates his misconduct.

(3) Does the condition 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 some avoidant misconduct such as going AWOL and failing to maintain his room, which can be natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the applicant's reported mental health conditions and the applicant misconduct of theft and writing dishonored checks in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions; 2) Most mental health conditions do not impact one's ability to distinguish right from wrong. However, per Liberal Consideration, the applicant's experience of mental health conditions 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, medical advisor's review 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 received multiple disciplinary actions and was charged with having been AWOL, from 21 September 1982 to 27 July 1983 (309 days), punishable under the Uniform Code of Military Justice 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. The Board noted the applicant's length of absence and 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.

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 contends he was experiencing other mental health conditions stemming from childhood that impacted him at the time of his active service which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing other mental health conditions that stemmed from childhood at the time of his active service which mitigates his misconduct.

(3) Does the condition 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 some avoidant misconduct such as going AWOL and failing to maintain his room, which can be natural sequelae to some mental health conditions. However, the presence of misconduct is not sufficient evidence of a mental health condition. In addition, there is no nexus between the applicant's reported mental health conditions and the applicant misconduct of theft and writing dishonored checks in that: 1) These types of misconduct are not a part of the diagnosis or natural sequelae of most mental health conditions; 2) Most mental health conditions do not impact one's ability to distinguish right from wrong.

However, per Liberal Consideration, the applicant's experience of mental health conditions 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:

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 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.

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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), paragraph 5-3 (Policy). Separation under this paragraph was the Secretary of the Army's prerogative. The separation of any Soldier of the Army under this authority was based on Secretary of the Army determination that separation was in the best interests of the Army.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation (Separation Program Designators (SPD) Code) and 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

5. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have the narrative reason for separation: "For the Good of the Service – In Lieu of Court-Martial" entered on their DD Form 214.

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program.

a. Table 3-6 (Armed Forces RE Codes, Regular Army RE Codes) included the following list of the RE codes:

- RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria were met
- RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived
- RE-3B – Soldiers with lost time during their last period of service needed a waiver to reenter the Armed Forces.

b. Table 4-1 (Waivable Moral and Administrative Disqualifications).

Line A (Disqualification) states prior service applicants with lost time during their last period of service required a waiver to reenter the Regular Army.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. 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 Board 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 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 misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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.

10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//