

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240011340

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under honorable conditions (general) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 July 2024
- Self-authored statement
- DD Forms 214 (Certificate of Release or Discharge from Active Duty), (two) 30 July 1980 and 19 December 1990
- Department of Veterans Affairs (VA) letter, 28 April 2025, showing his diagnoses of depressive disorder, unspecified anxiety disorder, obsessive compulsive disorder/hoarding disorder, and seizure disorder

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 AR20060002851 on 3 October 2006.

2. The applicant states at the time of his discharge he was going through medical and family issues, his discharge was due to stress and health issues. He submits a self-authored statement available for the Board's review in the supporting evidence file.

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

a. Having had prior service in the Army National Guard, the applicant enlisted in the Regular Army on 12 November 1980, for a 3-year period. He extended his enlistment on 23 October 1981 for an additional 15 months. He reenlisted on 21 August 1984 and on 21 December 1987, for a 4-year period.

b. He served overseas in Germany from 21 January 1982 to 4 March 1985 and in Hawaii from 27 February 1988 to 17 December 1990.

c. He received non-judicial punishment (NJP) on 9 November 1990 for wrongfully using marijuana on or between 30 September 1990 and 9 October 1990.

d. His commander notified him of the intent to separate him under the provisions of (UP) Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 due to misconduct; he acknowledged receipt on 27 November 1990.

e. He was advised by consulting counsel of the basis for the contemplated action to separate him for misconduct UP Chapter 14, AR 635-200 and its effects; of the rights available to him; and the effects of any action by him waiving his rights. Additionally, he elected to not submit a statement in his own behalf.

f. His chain of command recommended he receive an under honorable conditions (general) discharge.

g. On 30 November 1990, the separation authority approved his separation UP AR 635-200, Chapter 14 for misconduct and further directed he be issued an under honorable conditions (general) discharge.

h. Accordingly, he was discharged under honorable conditions (general) on 19 December 1990, he served 10 years, 1 month, and 8 days of net active service this period.

4. In his previous request (AR20060002851) on 3 October 2006, after reviewing the application and all supporting documents, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. His request for relief was denied.

5. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends that his request is related to his experience of bullying and mental health conditions including PTSD, which impacted the circumstances of his discharge. 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 entered the Regular Army on 12 November 1980 following a successful prior enlistment in the Army National Guard; 2) On 9 November 1990, he received NJP for using marijuana; 3) The applicant was discharged on 19 December 1990, Chapter 14- for misconduct-abuse of illegal drugs.

He completed 10 years, 1 month, and 8 days of net active service this period. His military service was characterized as under honorable conditions (general). 4) On 3 October 2006 after petitioning for clemency, the Board determined that the applicant's discharge was fair and equitable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced bullying and mental health conditions including PTSD during his active service that impacted his conduct resulting in his discharge. On 27 November 1990, the applicant underwent a mental status evaluation by an active-duty mental health provider that did not find evidence of any mental health conditions and he was cleared for administrative action deemed appropriate by command.

d. The VA's Joint Legacy Viewer (JLV) was examined which revealed the applicant connected with the VA on 28 June 2000 for the treatment of major depressive disorder and stress. The applicant has continued to engage intermittently with VA mental health most recently on 28 April 2025 for the treatment of depressive disorder due to a medical condition, unspecified anxiety disorder, OCD/hoarding disorder, and seizure disorder. The applicant also provided a hard-copy memorandum summarizing this VA mental health encounter. The applicant's providers did not directly connect the applicant's conditions with his military service. The applicant is currently 40% VA service-connected for various physical conditions. 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 service-connected 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 contends he was experiencing bullying and mental health conditions including PTSD that mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced bullying and mental health conditions including PTSD at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as utilizing drugs that could be determined to be avoidant behavior. Avoidant behavior can be a natural sequelae of certain mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced mental health conditions or experiences while on active service, which mitigate his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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 wrongful use of marijuana, punishable under the Uniform Code of Military Justice with a punitive discharge. 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 misconduct? Yes, the applicant contends he was experiencing bullying and mental health conditions including PTSD that mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced bullying and mental health conditions including PTSD at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant had a condition or experience that mitigates his misconduct. The applicant did engage in misconduct such as utilizing drugs that could be determined to be avoidant behavior. However, the presence of misconduct is not sufficient evidence of a mental health condition.


3. The Board concurred with the medical advisor’s review finding insufficient evidence to support the applicant had a service-connected condition or experience that mitigates 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. Section 1556 of Title 10, U.S. Code, 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), in effect at the time, set 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 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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

5. 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.

//NOTHING FOLLOWS//