

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2025

DOCKET NUMBER: AR20240011366

APPLICANT REQUESTS: upgrade of his bad conduct discharge.

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

DD Form 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 states:

- In 1975, he was a private first class (PFC)/E-3 stationed at Fort Huachuca, AZ; during lunch, he was visiting with other Soldiers; "we had just returned from Vietnam...we were encouraging each other"
- "At that time, a white NCO (noncommissioned officer) approached me, placed his hands on me, (and) (illegible) by my color...(he) called me a N__, told me to leave the area. I defended myself and was sentenced to Ft. Leavenworth for 456 days."
- "I was framed for the theft, which could not be proven. At the end, they (found) out that my signature was forged on several documents"
- The applicant states he was judged unfairly; "The commander was white and did not consider any of the witness statements. This action had caused me great depression and stress as a Vietnam Veteran."
- On his application, the applicant has checked the box for "Other Mental Health" issues

3. On 4 April 2025, the Army Review Boards Agency requested the applicant provide medical documentation for his other mental health conditions. In a self-authored letter, the applicant, in effect, wrote the following:

- The applicant indicated he was waiting for related medical documents; he then stated he had undergone "28 vocal procedures" due to an illness contracted while stationed in Korea
- Additionally, he was hospitalized at Fort Huachuca for a bloodstream infection, from which he had never fully recovered; rather than showing him in the hospital, his unit reported him as absent without leave (AWOL)
- "That infection has (led) to multiple vocal surgeries, so much stress, 2 heart attacks, and 2 strokes over the years as well as tremendous mental challenges"; the applicant lists the dates and locations of his subsequent post-service hospitalizations
- The applicant concluded by stating, "I've also served so many years in ministry in my Christian faith, and I'm currently serving in multiple ministries in which I've always wanted to go back school and to college to obtain my degree"
- "When I entered into the military, I had great ambitions...I wanted to become a career Soldier, but I never expected in my life what I experienced; a vicious brutal battle with evil hatred and racism in my life"

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

- On 10 August 1973, after obtaining his guardian's permission, the applicant enlisted into the Regular Army for 3 years
- On 8 January 1974, upon completion of initial entry training and the award of military occupational specialty 36C (Lineman), orders assigned him to a signal battalion within the 2nd Infantry Division, Korea; effective 23 September 1974, the applicant's leadership promoted him to private first class (PFC)/E-3
- On 25 January 1975, the applicant completed his tour in Korea, and permanent change of station order reassigned him to a signal battalion on Fort Huachuca
- On 12 March 1975, the applicant arrived at Fort Huachuca; on 14 March 1975, the applicant's company commander requested the battalion commander offer the applicant nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for AWOL
- On 28 March 1975, the applicant accepted a field grade NJP for having been AWOL, from 28 February to 12 March 1975 (12 days); punishment included reduction to private (PV1)/E-1
- On 7 April 1975, the applicant appealed his NJP, arguing that while on leave, his fiancée had required hospitalization, and he went to the nearest Army installation seeking either a leave extension or compassionate reassignment; his efforts were unsuccessful; he added this was his first offense in 20-months of service
- On 17 April 1975, the appellate authority denied the applicant's appeal
- On 22 September 1975, the applicant accepted NJP after his leadership reported him as AWOL, on 6 August 1975, from 0700 to 1500 hours; on 15 December 1975, the applicant accepted NJP for AWOL from 4 to 5 December 1975 (1 day)

- On 14 January 1976, a special court-martial, empowered to adjudge a bad conduct discharge, found the applicant guilty of violating Article 128 (Assault), UCMJ, by striking Sergeant First Class J__ W. C__ in the face with his fist; the court sentenced the applicant to the following and immediately remanded him to confinement:
 - Forfeiture of \$230 per month for 3 months
 - Confinement for 2 months and 23 days
 - Bad Conduct Discharge
- On 12 March 1976, the special court-martial convening authority approved the applicant's special court-martial sentence and directed his confinement at the Fort Bliss, TX confinement facility; on 23 March 1976, the confinement facility released the applicant and returned him to his unit
- On 28 June 1976, the applicant accepted NJP for willfully disobeying a staff sergeant's (SSG) order, using disrespectful language toward the SSG, and communicating insulting and obscene language toward a female civilian
- On 19 August 1976, the applicant accepted NJP for damaging a soda machine with a crowbar and stealing \$47 worth of merchandise and monies from the Post Exchange
- On 17 November 1976, a general court-martial convicted the applicant of the following UCMJ Articles:
 - Article 121 (Larceny) – on 21 May 1976, the applicant stole audio equipment valued at \$100 and belonging to PFC J__ E. T__
 - Article 86 (AWOL) – the applicant was AWOL from 8 to 28 September 1976 (20 days)
- The court sentenced the applicant to 24-months' confinement, forfeiture of \$125 per months for 24 months, and a dishonorable discharge; the court immediately remanded the applicant to confinement
- On 26 November 1976, orders transferred the applicant to the U.S. Disciplinary Barracks (USDB), Fort Leavenworth, KS
- On 9 December 1976, the U.S. Army Court of Military Review affirmed the findings of guilt and the sentence in the applicant's special court-martial; however, the court directed that the forfeitures should apply only to pay due on or after the date of the convening authority's action
- On 21 December 1976, the general court-martial convening authority approved the applicant's general court-martial sentence
- On 10 March 1977, U.S. Army Court of Military Review affirmed the findings of guilty and the sentence in the applicant's general court-martial case
- On 1 June 1977, a special court-martial order declared the completion of the applicant's appellate process and directed the sentence's execution and the

applicant's confinement at the USDB; (a handwritten note states the bad conduct discharge was to take precedence over the dishonorable discharge subsequently announced on 1 July 1977)

- On 1 July 1977, a general court-martial order announced the completion of the applicant's appellate process and directed the sentence's execution and the applicant's confinement at the USDB;
- On 27 September 1977, the Army separated the applicant with a bad conduct discharge under other than honorable conditions
- The applicant's DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years and 10 months of his 3-year enlistment contract, with lost time totaling 456 days (AWOL and confinement); the report additionally reflects the following:
 - Item 9c (Authority and Reason) – paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)), Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Separation Program Designator (SPD) "JJD"
 - Item 10 (Reenlistment (RE) Code) – RE-4
 - Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Armed Forces Expeditionary Medal, and a marksmanship qualification badge

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his Bad Conduct Discharge (BCD). 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 10 August 1973, 2) the applicant received a Field Grade (FG) Article 15 on 28 March 1975 for having been absent without leave (AWOL) from 28 February to 12 March 1975. On 7 April 1975, the applicant appealed his NJP, arguing that while on leave his fiancée had required hospitalization and he went to the nearest Army installation seeking either a leave extension or compassionate reassignment; his efforts were unsuccessful; he added this was his first offense in 20-months of service. On 17 April 1975, the appellate authority denied the applicant's appeal, 3) the applicant received NJP on 22 September 1975 for going AWOL on 06 August 1975 from 0700 to 1500. He also received NJP on 15 December 1975 for going AWOL from 04 to 05 December 1975, 4) on 14 January 1976, a special court-martial, found the applicant guilty of assault by striking a Sergeant First Class in the face with his fist; the court sentenced the applicant to the following and immediately remanded him to confinement: Forfeiture of \$230 per month for 3 months, Confinement for 2 months and 23 days, and a Bad Conduct Discharge. He was released from confinement on 23 March 1976 and returned to his unit, 5) he received

NJP on 28 June 1976 for willfully disobeying a SSG's order, using disrespectful language towards the SSG, and communicating insulting and obscene language towards a female civilian, 6) he received NJP on 19 August 1976 for damaging a soda machine with a crowbar and stealing \$47 worth of merchandise and monies from the Post Exchange, 7) on 17 November 1976 the applicant was convicted by a General Court-Martial of Larceny (on 21 May 1976) and of going AWOL from 08 to 28 September 1976, 8) the applicant was discharged on 27 September 1977 under the provisions of AR 635-200, paragraph 11-2, with a Separation Program Designator of JJD, and reenlistment code of RE-4.

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 Department of Veterans Affairs (VA) 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. Military medical records included as part of his application were reviewed. An SF 600 (Chronological Record of Medical Care) shows he was admitted to the hospital from 12 August 1975 through 25 August 1975 for arthritis, PIP joint, left right finger (treated, resolved), and traumatic laceration of the right ankle, noted to be resolving. The available records were void of any Behavioral Health (BH) diagnosis or treatment history.

d. A review of JLV shows the applicant is not service connected through the VA for any conditions. The applicant presented to the VA on 15 April 2025 due to ongoing anxiety and depression, which was noted to have been present for several years. It was noted that he brought a letter seeking a formal psychiatric evaluation to get service connected. It was also documented that he denied receiving any formal psychiatric treatment in the past though had been trialed on Prozac and Zoloft (antidepressants) which were prescribed by primary care. The provider diagnosed him with Unspecified Depressive Disorder. The date of onset of the condition was not specified, nor did the evaluating provider associate the condition with his military service.

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. The available in-service medical records were void of any BH diagnosis or treatment history and the applicant provided no medical documentation supporting his assertion of Other Mental Health Issues. Review of VA medical records show he was diagnosed with Unspecified Depressive Disorder in 2025; however, the date of onset of the condition was not documented and the provider did not associate the condition with his military service. 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:

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. Based upon the misconduct leading to the applicant's separation and the recommendation found in the medical review related to liberal consideration, the following Kurta Questions were considered:

(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. The available in-service medical records were void of any BH diagnosis or treatment history and the applicant provided no medical documentation supporting his assertion of Other Mental Health Issues.

2. The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 the following:

a. 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.

b. With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Title 10, U.S. Code, 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, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge). 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 subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the

pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)). A Soldier received a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate authority must have completed the review process, and the affirmed sentence ordered duly executed.

d. Chapter 5 (Separation for the Convenience of the Government), Section II (Secretarial Authority), paragraph 5-3 (Authority) stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority and were to be based on a determination that the separation was in the best interests of the Army.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the SPD code.

b. For item 10 (Reenlistment (RE) Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

5. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD."

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

a. Table 4-6 (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-4 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation and their disqualification could not be waived

b. Appendix A (Nonwaivable Moral and Administrative Disqualifications). Line Q (Disqualification) stated Soldiers convicted by a general court-martial during their last term of service were disqualified for reentry into 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. The ABCMR decides cases on the evidence of record; it is not an investigative body. 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).

b. 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//