

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240011393

APPLICANT REQUESTS:

- upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable
- personal appearance before the Board via video/telephone

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), 1 September 1981
- Department of Veterans Affairs (VA) decision letters, 17 April 2024 and 21 June 2024 showing he receives treatment for various medical conditions
- VA Statement in Support of Claim

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 he has taken steps to address his depression and anxiety, with the environment changes from his childhood to military. He encountered other enlisted members with distributing behaviors and he knows he could have done things differently while serving but he needed counseling. He believes his mental health issues led to his discharge and with an upgrade he will be able to achieve his goals and further better his life.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 1 May 1978, for a 3-year period. He reenlisted on 13 November 1979 and extended on 13 November 1980, for an additional month.

b. He received non-judicial punishment on 18 July 1980 for committing assault upon another Soldier on or about 7 May 1980 by hitting the Soldier in the facial area with force likely to produce grievous bodily harm to wit: a 1/5 gin bottle. He was reduced to the rank of E-3.

c. His official military personnel file is void of the facts and circumstances which led to his discharge; however, his DD Form 214 shows he was discharged on 1 September 1981 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) Chapter 10 (Discharge for the Good of the Service), for conduct triable by court-martial, with an UOTHC discharge. He served 3 years, 4 months, and 1 day of net active service this period.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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 other than honorable discharge. He contends he experienced mental health conditions such as depression and anxiety that 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 1 May 1978; 2) On 18 July 1980, the applicant received NJP for assaulting another soldier with a 1/5 gin bottle; 3) His official military personnel file is void of the facts and circumstances which led to his discharge; 4) On 1 September 1981, the applicant was discharged, Chapter 10, for administrative discharge conduct triable by court-martial. His service was characterized as under other than honorable conditions. He completed 3 years, 4 months, and 1 day 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) and hardcopy VA medical 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 mental health conditions such as depression and anxiety that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV indicated that the applicant connected with VA medical and mental health care, primarily for HUD services from 04 May 2023 to 01 August 2024. The applicant provided VA documentation dated 21 June 2024 which noted a VA service connection for treatment purposes only for major depressive disorder with anxious distress without additional information.

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 diagnosed mental health condition or experience that mitigates his misconduct. In addition, there is insufficient information surrounding the events that 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.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including depression and anxiety, which mitigates his misconduct. The applicant was diagnosed with VA service-connected major depressive disorder with anxious distress.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including depression and anxiety, which mitigates his misconduct. The applicant was diagnosed with VA service-connected major depressive disorder with anxious distress.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient information surrounding the events that 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. In addition, there is no nexus between the applicant's reported mental health condition(s) and assaulting a fellow soldier in that: 1) this type of misconduct is 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, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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 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 Board noted that the applicant received nonjudicial punishment for assault with intent to cause serious harm. Although his complete separation package is not available, documents show he voluntarily requested discharge in lieu of trial by court-martial (For the Good of the Service). Therefore, the Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted and concurred with the medical's advisory opinion which found 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 asserts he experienced mental health conditions including depression and anxiety, which mitigates his misconduct. The applicant was diagnosed with VA service-connected major depressive disorder with anxious distress.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including depression and anxiety, which mitigates his misconduct. The applicant was diagnosed with VA service-connected major depressive disorder with anxious distress.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient information surrounding the events that 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. In addition, there is no nexus between the applicant's reported mental health condition(s) and assaulting a fellow soldier in that: 1) this type of misconduct is 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, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

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

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

4. ADMINISTRATIVE NOTE: A review of the applicant's record shows his DD Form 214 for the period ending 1 September 1981 is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

"SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE" and
"CONTINUOUS HONORABLE SERVICE FROM 780501 UNTIL 791112"

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

8/15/2025

X

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214 for the period ending 1 September 1981 is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 780501 UNTIL 791112

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. 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. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

5. 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.

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