

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2025

DOCKET NUMBER: AR20240011410

APPLICANT REQUESTS:

- In effect, reconsideration of his previous request to upgrade his under honorable conditions (general) discharge to honorable
- Permission to appear before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form (SF) 600 (Health Record – Chronological Record of Medical Care)

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999018175, on 4 March 1999.

2. The applicant states, in effect:

- While serving on active duty in 1979, three drunk Soldiers assaulted him as he showered; as a result, he sustained a serious head injury
- His chain of command did not punish those Soldiers and forced him to remain in the same barracks as his assailants; he feared they would assault him again
- His leadership offered him a discharge, and he was under the impression he would receive an honorable character of service, but it turned out he was mistaken; the applicant adds that, due to the assault, he just wanted to get out as soon as possible
- Because of the trauma he experienced during the assault, he feels he has now incurred post-traumatic stress disorder (PTSD); (on his application, the applicant has checked the box for PTSD)
- The applicant discloses that he no longer trusts being around crowds, as well as anyone who is drinking; he is always vigilant and does not like having people behind him

- In support of his request, the applicant provides an SF 600, which shows two entries, respectively dated 12 April and 24 May 1979; the entries state, in part:
 - 12 April 1979 – "(?) Assault victim (2) cm lac. (2) parietal region of skull c̄ loc by hx"
 - 24 May 1979 – "Pt c/o being hit on nose x 1 day ago...states it hurts around eyes...slightly swollen, no discoloration, no broken bone"

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

- On 24 October 1978, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty 11C (Indirect Fire Infantryman), orders assigned him to an infantry battalion in Germany, and he arrived, on 28 February 1979
- Between 3 March and 15 April 1979, the applicant's leadership issued him 20 counseling statements pertaining to the applicant's personal appearance and cleanliness; lack of motivation and initiative; disrespect toward superiors; and for displaying an unwillingness to "pitch in and help his squad"
- In or around April 1979, the applicant's squad leader, platoon sergeant, platoon leader, and company commander each wrote statements detailing the applicant's shortcomings and advocating for his separation
- On 29 May 1979, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant under paragraph 5-31 (Expeditionary Discharge Program), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - The commander stated the reason for his action was the applicant's inability to accept instructions and directions; clearly substandard performance; and lack of cooperation with peers and superiors
 - The commander advised the applicant he had the right to decline the discharge; he additionally indicated he was recommending the applicant for a general discharge, but the separation authority would make the final determination
- On 30 May 1979, after consulting with counsel (a Judge Advocate General officer), the applicant acknowledged the separation notification and affirmed he voluntarily accepted the discharge; he opted not to submit statements in his own behalf and indicated he understood the ramifications of a general discharge
- On 30 May 1979, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions
- On 13 June 1979, the applicant underwent a mental status evaluation; the resulting report (DA Form 3822-R (Report of Mental Status Evaluation)) opined

the applicant showed no significant mental illness and met the medical retention standards outlined in AR 40-501 (Standards of Medical Fitness)

- On 13 July 1979, the Army separated the applicant with a general discharge under honorable conditions; his DD Form 214 (Report of Separation from Active Duty) shows he completed 8 months and 20 days of his 3-year enlistment contract; the report additionally reflects the following:
 - Item 9c (Authority and Reason) – Paragraph 5-31, AR 635-200; (separation program designator (SPD)) "JGH"
 - Item 10 (Reenlistment (RE) Code) – RE-3
 - Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- On 24 June 1998, the applicant petitioned the ABCMR, requesting an upgraded character of service
 - The applicant argued he had received inadequate counsel and his leadership had cheated him and persuaded him to accept the discharge
 - He maintained he could have taken a partial medical separation due to pinched nerves in his legs and ankles; additionally, he believed his mental health was in question
- On 4 March 1999, after considering the applicant's arguments and reviewing his service record, the Board denied the applicant's request
 - The Board noted the applicant had failed to offer sufficient evidence to show a correction was warranted
 - Additionally, the applicant's medical record had indicated he was in good health and had no mental health issues

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his general discharge under honorable conditions to an honorable character of service. He contends he experienced PTSD which 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 24 October 1978; 2) The applicant's leadership between 3 March and 15 April 1979 issued him 20 counseling statements pertaining to the applicant's personal appearance and cleanliness; lack of motivation and initiative; disrespect toward superiors; and for displaying an unwillingness to "pitch in and help his squad"; 3) In or around April 1979, the applicant's squad leader, platoon

sergeant, platoon leader, and company commander each wrote statements detailing the applicant's shortcomings and advocating for his separation. On 29 May 1979, the applicant's company commander advised him, that he was initiating separation action against the applicant under paragraph 5-31 (Expeditious Discharge Program); 4) On 13 July 1979, the applicant was discharged with a general discharge under honorable conditions. He completed 8 months and 20 days of his 3-year enlistment contract.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The Department of Veterans Affairs (VA) Joint Legacy Viewer (JLV) and hardcopy military medical records provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD as a result of a physical assault he experienced during active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service. There is evidence the applicant was treated for a possible assault on 12 April 1979, and he was treated for a nose injury on 24 May 1979. On 13 June 1979, the applicant underwent a mental status evaluation as part of his administrative separation proceedings. He was not diagnosed with a mental health condition and was cleared from a psychiatric perspective for any administrative action deemed appropriate by his command.

d. A review of JLV provided evidence the applicant began to engage with the VA predominately in 2018 for physical concerns and assistance with housing, which has been the primary focus of his care at the VA till present. He underwent a Compensation and Pension Evaluation for mental health conditions in 2024 and was diagnosed with service-connected PTSD (SC 50%) related to his report of a physical assault on 12 April 1979. However, the applicant has not attended behavioral health treatment for this condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD in 2024 related to a reported physical assault, which occurred on 12 April 1979.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service which mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD in 2024 related to a reported physical assault, which occurred on 12 April 1979.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service after his physical assault on 12 April 1979. The applicant did engage in erratic and avoidant behavior, while on active service. This type of behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, any misconduct which occurred after 12 April 1979 could be considered mitigatable. However, there is insufficient evidence beyond self-report the applicant was experiencing PTSD prior to this event. Thus, there is insufficient evidence to support mitigation for his misconduct prior to this event. Yet, the applicant contends he was experiencing PTSD which mitigates his misconduct and discharge, and per Liberal Consideration, his contention 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, 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:

2. The Board considered the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service which mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD in 2024 related to a reported physical assault, which occurred on 12 April 1979.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service after his physical assault on 12 April 1979. The applicant did engage in erratic and avoidant behavior, while on active service. This type of behavior can be a natural sequelae to PTSD.

2. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One possible outcome was to grant relief based on the medical review. However, the Board majority 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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 amendment of the ABCMR decision rendered in Docket Number AR1999018175 on 4 March 1999.

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, 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.

2. 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 1-13a (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. Section II (Secretarial Authority), paragraph 5-3 (Authority). 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.

c. Paragraph 5-31 (Expeditious Discharge Program). Commanders could discharge Soldiers under the Expeditious Discharge Program when those Soldiers demonstrated they could or would not meet the Army's accepted standards because of one or more of the following conditions:

- Poor attitude
- Lack of motivation
- Lack of self-discipline
- Inability to adapt socially or emotionally
- Failure to demonstrate promotion potential

(1) The intent of Expeditious Discharge Program was to provide commanders with a means of expeditiously eliminating substandard Soldiers, without the commander incurring the administrative burden typically associated with administrative discharges. However, the regulation stipulated Expeditious Discharge Program was not a "panacea," and did not relieve commanders of their professional obligation to make a sincere effort to produce good Soldiers from seemingly poor ones.

(2) The Soldiers had to have completed at least 6, but not more than 36 months of continuous active duty and be on their first enlistment. In addition, commanders could only separate Soldiers under this paragraph if they voluntarily accepted the separation. The available characters of service could be either honorable or an under honorable conditions (general).

3. 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.

4. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 5-31, AR 635-200 were to receive an SPD of "JGH."

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

a. Table 3-1 (Waiver Approval Authorities – Basic Eligibility Criteria). Line L (Disqualification) states prior service applicants who last separated under the Expeditious Discharge Program required a waiver from the Commanding General, U.S. Army Military Personnel Center (MILPERCEN) to reenter the Regular Army.

b. 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

6. 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.

7. 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.

8. 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.

9. 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.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//