

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20240011548

APPLICANT REQUESTS: upgrade of his character of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 1 August 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 January 1997

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 was discharged solely because he stated he enjoyed doing what they sent him there to do, meaning killing enemy combatants. He was immediately sent to Fort Knox where he was advised of his discharge, he believes he had a mental condition at the time. He does not remember a psychiatric evaluation being done prior to his separation. He believes he had a mental condition he was unaware of while serving.
3. On his DD Form 293, he annotates other mental health is related to this request.
4. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 17 June 1994, for a 4-year period.
 - b. He received nonjudicial punishment on 21 December 1995, for being derelict in his performance of duties by failing to turn off an iron in his room thus creating a fire hazard on or about 10 November 1995.

c. Court-martial charges were preferred against him for violations of the Uniform Code of Military Justice (UCMJ); the relevant DD Form 458 (Charge Sheet) shows he was charged with absenting himself without leave (AWOL) on or about 14 June 1996 and remaining AWOL until on or about 13 August 1996.

d. Following consultation with legal counsel on 23 August 1996, he requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). In his request for discharge, he indicated that:

- he was making this request of his own free will and had not been subjected to any coercion by any person
- he understood that by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge
- he acknowledged he understood that if the discharge request was approved, he could be deprived of many or all Army benefits, that he could be ineligible for many or all benefits administered by the VA, and that he could be deprived of his rights and benefits as a veteran under both Federal and State law
- he did not elect to submit a statement in his own behalf

e. On 26 September 1996, his immediate commander recommended approval of his request for discharge with an issuance of an under other than honorable conditions (UOTHC) discharge.

f. On 9 October 1996, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, discharge in lieu of trial by court-martial and directed that he be reduced to private/E-1 and issued an UOTHC discharge.

g. Accordingly, he was discharged on 23 January 1997. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with AR 635-200 with an UOTHC characterization of service, in the grade of E-1. He completed 2 years, 5 months, and 7 days of net active service with time lost from 14 June 1996 to 12 August 1996.

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 other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). On his DD Form 293, 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 17 June 1994, 2) he received nonjudicial punishment on 21 December 1995 for being derelict in his performance of duties by failing to turn off an iron in his room thus creating a fire hazard on or about 10 November 1995, 3) court-martial charges were preferred against the applicant for being absent without leave (AWOL) from 14 June 1996 to 13 August 1996, 4) following consultation with legal counsel on 23 August 1996, he requested discharge under the provisions of AR 635-200, Chapter 10, 5) the applicant was discharged on 23 January 1997 under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, with a separation code of KFS and reentry code of '3.'

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 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. Military service treatment records (STRs) available via JLV were reviewed. A Report of Medical Examination dated 06 June 1995 for the purposes of chapter separation showed psychiatric as 'normal' on clinical evaluation. His PULHES was documented as 111111, indicative he was not on a BH profile. He was medically cleared for separation. The associated Report of Medical History dated 06 June 1995 shows he marked 'yes' to 'depression or excessive worry.' In the remarks section, it was noted that it was secondary to financial problems which were resolved. A Report of Medical History for the purposes of enlistment dated 22 June 1993 shows the applicant marked 'no' to all BH-related items.

d. There is no documentation in JLV showing that the applicant is service-connected through the VA for any conditions and there were no VA medical records available for review.

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. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. 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:

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 applicant was separated for absenting himself from his unit from 14 June to 13 August 1996. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review finding:

(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. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. 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.

Therefore, based upon the misconduct leading to the applicant's separation and the findings outlined in the medical review, the Board concluded the characterization of service issued upon separation was appropriate.

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.

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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. 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. 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.

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//