

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 May 2025

DOCKET NUMBER: AR20240011656

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge. Additionally, he requests an 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)
- Self-authored letter, 2 pages
- Two character reference letters that collectively attest to his faith, kindness, selfless service to others, and positive involvement with youth

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 apologizes to the Army for his behavior. He only reenlisted to remain at Fort Stewart, GA. His conduct went downhill after he received reassignment orders for Germany. He didn't want to go back overseas, so he did things to get out. He regrets not making a career out of the Army. In 2006, he gave his life to Christ. He has been ministering, helping, and leading people to Christ. Today, he is a better person.
3. A review of the applicant's available service record reflects the following:
 - a. He enlisted in the Regular Army on 18 October 1978.
 - b. He accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 4 January 1980, for failing to go at the time prescribed to his appointed place of duty, on or about 28 December 1979. His punishment included forfeiture of \$50.00, and 8 days restriction.

c. He accepted NJP under Article 15 of the UCMJ on 14 March 1980, for failing to go at the time prescribed to his appointed place of duty, on or about 7 March 1980 and on or about 10 March 1980. His punishment included reduction to E-2, forfeiture of \$121.00, and 7 days confinement.

d. He accepted NJP under Article 15 of the UCMJ on 10 April 1981, for having his weapon in his wall locker instead of on his person, on or about 20 March 1981. His punishment included reduction to E-3, and 7 days extra duty and restriction.

e. He reenlisted on 15 September 1981.

f. He accepted NJP under Article 15 of the UCMJ on 26 January 1983, for being absent from formation, on or about 26 January 1983. His punishment included 5 days extra duty and restriction.

g. He was reported as absent without leave (AWOL) on 17 March 1983, and remained absent until he returned to military control on 24 March 1983.

h. He was reported as AWOL a second time, on 20 April 1983, and remained absent until he returned to military control on 22 April 1983.

i. He received formal counseling on the following dates/for:

- 4 May 1983, failing to report for duty
- 17 May 1983, indebtedness; being absent from his place of duty

j. He accepted NJP under Article 15 of the UCMJ on 17 May 1983, for missing movement, on or about 17 March 1983. His punishment included reduction to E-3, forfeiture of \$100.00 for one month, and 10 days extra duty and restriction.

k. He accepted NJP under Article 15 of the UCMJ a second time on 17 May 1983, for being AWOL from on or about 17 March 1983, until on or about 24 March 1983. His punishment included reduction to E-2, forfeiture of \$100.00 pay per month for two months, and 30 days extra duty.

l. He received additional counseling on the following dates/for:

- 12 July 1983, failing to be at his appointed place of duty; disobeying an order
- 27 September 1983, missing formation on several occasions

m. His commander notified him on 25 October 1983, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for patterns of misconduct.

n. He acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He declined to submit a statement in his own behalf.

o. He was reported as AWOL a third time, on 7 November 1983, and remained absent until he returned to military control on 8 November 1983.

p. He underwent a mental status evaluation on 14 November 1983. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

q. He received additional counseling on 15 November 1983, for disobedience to a noncommissioned officer, failing to repair, and being AWOL.

r. On 15 November 1983, his commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12b, for misconduct. As the specific reasons, his commander cited the applicant's conduct and lack of individual discipline. His continued presence was prejudicial to the morale, discipline, and combat effectiveness of the unit.

s. Consistent with the chain of command's recommendation, the separation authority approved the recommended discharge on 8 December 1983, and directed his reduction to the lowest enlisted grade and issuance of a DD Form 794A (UOTHC Discharge Certificate).

t. The applicant was discharged on 16 December 1983. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b, for patterns of misconduct. His service was characterized as UOTHC. He completed 5 years, 1 month, and 19 days of net active service this period with 10 days of time lost.

u. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

4. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he was experiencing mental health conditions 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 18 October 1978; 2) The applicant accepted non-judicial punishment (NJP) on 4 January 1980 and 14 March 1980 for not being on time to his place of duty; 3) the applicant accepted NJP, on 10 April 1981, for having his weapon in his wall locker instead of on his person; 4) the applicant accepted NJP, on 26 January 1983, for being absent from formation; 5) The applicant was reported AWOL twice (17-25 March 1983 and 20-22 April 1983); 6) The applicant accepted NJP on 17 May 1983 for missing movement and he accepted another NJP on the same day for being AWOL from 17-24 March 1983; 7) On 16 December 1983, the applicant was discharged, Chapter 14-12b, for patterns of misconduct. His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health conditions, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, while on active service. The applicant underwent a Mental Status Evaluation on 14 November 1983, as part of his administrative separation proceedings. He was not diagnosed with a mental health condition and was cleared from a psychiatric perspective to participate in any administrative action deemed appropriate by Command.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition.

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 mental health 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 asserts he experienced mental health conditions, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service that mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did engage in avoidant and erratic behavior, which could be a natural sequela to some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing requests for discharge upgrade, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy period of service completed and the nature of the misconduct leading to the applicant's separation, the Board concluded that upgrading the applicant's characterization of service to General, Under Honorable Conditions was appropriate.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes also be completed to more accurately reflect the military service of the applicant.

//SIGNED//
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 16 December 1983, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 781018 UNTIL 810914
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 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.
 - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 14, paragraph 14-12b provides for the separation of Soldiers when they have a pattern of misconduct involving acts of discreditable involvement with civil or military authorities and conduct which is prejudicial to good order and discipline. The issuance of a discharge under other than honorable conditions is normally considered appropriate for separations under the provisions of Chapter 14.

(1) The separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(2) Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

7. 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, Boards 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.

//NOTHING FOLLOWS//