

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011706

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge.

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

DD Form 149 (Application for Correction of Military Record), 26 August 2024

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 marked on his DD Form 149 that other behavior health issues or conditions are related to his request. He states his mother was placed in a mental care facility for suicidal thoughts. and due to his active military service and he remained home to care for her. This resulted in his absent without leave status (AWOL).
3. A review of the applicant's service records show the following:
 - a. On 6 September 1989, he enlisted in the Regular Army for 4 years. He attained the rank of private/E-2.
 - b. While assigned to the 2nd Battalion, 205th Parachute Infantry Regiment, 82nd Airborne Division, his status changed on:
 - 29 May 1990 from present for duty (PDY) to AWOL
 - 29 June 1990 from AWOL to dropped from the rolls (DFR)
 - 5 September 1990 from DFR to PDY; he surrendered to military authorities
 - c. On 10 September 1990, he voluntarily waived a separation medical examination.

d. On 14 September 1990, a DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 29 May 1990 to 5 September 1990.

e. On 14 September 1990, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of an under other than honorable conditions discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He provided a statement.

f. In his 14 September 1990 written statement, he noted he:

- went AWOL because of financial problems due to not receiving pay for four months
- after going through his chain of command and not receiving any help, he left
- personal problems at home also helped him decide to go AWOL
- he went to the Chaplain but received a negative response and was not given any help
- these reasons do not justify his going AWOL however he learned from his mistakes and wants to make things right

g. On 3 October 1990, the unit commander, U.S. Army Personnel Control Facility, recommended approval of his request.

h. On 17 October 1990, the separation authority approved his discharge with an under other than honorable conditions discharge and directed his reduction to the lowest grade.

i. On 6 November 1990, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial. He completed 10 Months and 22 days with 100 days' time lost as the result of AWOL.

4. There is no evidence he applied to Army Discharge Review Board for a review of his discharge within that Board's statute.

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

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) or honorable. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. More specifically, he stated that his mother was placed in a mental care facility due to suicidal ideation due to his active-duty service and thus he remained at home to care for her which resulted in his AWOL status. 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 06 September 1990, 2) on 14 September 1990, the applicant was charged with one specification of being AWOL from 29 May 1990 to 5 September 1990, 3) on 14 September 1990, he was advised of the basis for the contemplated trial by court-martial and after receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of AR 635-200, Chapter 10. Review of his personal statement shows he reported going AWOL due to not being paid for five months and due to personal problems, 4) the applicant was discharged on 6 November 1990 under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of court-martial.

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. 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. There were no in-service medical records available for review.

d. A review of JLV was void of medical information. There is no documentation showing the applicant is service connected through the VA for any conditions and 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 absencing himself from his unit. The Board found no error or injustice in the separation proceedings. The Board concurred with the medical advisor's review finding insufficient evidence to establish his misconduct was related to or mitigated by mental health issues.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 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 policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

c. An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. 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.

4. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//