

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011750

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge
- Permission to appear personally before the Board, via video/telephone

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

DD Form 149 (Application for Correction of Military Record)

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 already punished for the charges that led to his discharge, and he believes this was double jeopardy; he asks the Board to check all disciplinary actions in his service record and examine how much time elapsed between the actions and his separation
- He notes that JAG (a Judge Advocate General officer) told him, if he signed the paperwork, there would be no trial and no jail time; the reason for signing the paperwork had to do with disrespecting a senior officer
- The applicant adds that, prior to separating with an under other than honorable conditions character of service, he received two honorable discharges; he maintains those discharge should count for something
- He recently filed for a service-connected disability, and they told him he would not be receiving a monetary allowance because of his adverse separation; he feels his discharge has nothing to do with his injuries
- On his application he indicated that, in support of his claim, he was attaching a college diploma, medical records, and military personnel records; however, none of those documents arrived with his DD Form 149

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

- On 6 July 1976, the applicant enlisted into the Regular Army for 4 years; he was 18 years old; upon completion of initial entry training and the award of military occupational specialty 73C (Finance Specialist), orders assigned him to Germany; he arrived at his new unit, on 18 November 1976
- In May 1978, orders reassigned him to Fort Stewart, GA; effective 12 November 1979, his leadership promoted him to specialist five (SP5)E-5
- On 4 February 1980, he immediately reenlisted for 3 years; after completing assignments at Fort Stewart and Fort Benning, GA, the applicant transferred to Korea and arrived in December 1981
- On 4 November 1982, he immediately reenlisted for 3 years; on 19 January 1983, he transferred from Korea to Germany
- On 13 April 1983, he accepted nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice, after he absented himself from his place of duty for almost 4 hours
- On 26 March 1984, the Commanding General, 3rd Support Command, issued the applicant a general officer memorandum of reprimand; the GOMOR stated the applicant had had a motor vehicle accident, fled the scene, and was later determined to have been intoxicated
- On 5 April 1984, the applicant submitted his rebuttal; he offered details about his personal history and described his accomplishments while on active duty:
 - He disclosed that he was an only son and his father had died when he was very young; he had always felt pressure to be the head of the household and, by the age of 10, he incurred ulcers
 - He joined the Army and soon assumed leadership positions and received numerous letters of appreciation and achievement; while in Korea, he had helped his section pass a major inspection after it had failed for the past three years
 - In 1983, he married, but he felt a lot of pressure, "and I found the only release I could think of...drinking"; he and his wife had a baby daughter, and "the pressure (became) unbearable since I now had someone who was now going to depend on him for the majority of her life"
 - He was enrolled in ADAPCP (Alcohol and Drug Abuse Prevention and Control Program) classes, and he hoped the classes would help him get his life together
- On 17 April 1984, the GOMOR issuing authority directed the GOMOR's placement in the applicant's official military personnel file
- In July 1984, the supporting ADAPCP placed the applicant in Track III (a 6 to 8 week intensive residential rehabilitation treatment program); upon his release

from the program, the final diagnosis included "Alcohol Abuse, in remission"; his ADAPCP counselors placed him on Antabuse

- The applicant's separation packet is unavailable for review; however, his service record includes a DD Form 214 (Certificate of Release or Discharge from Active Duty), which shows that, on 9 September 1985, the Army separated him under other than honorable conditions; the report additionally reflects the following:
 - Item 12 (Record of Service) – the applicant completed 9 years, 2 months, and 4 days of net active duty service
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon with Numeral "2," Noncommissioned Officer Professional Development Ribbon, Army Good Conduct Medal (2nd Award) and a marksmanship qualification badge
 - Item 25 (Separation Authority) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (Discharge for the Good of the Service)
 - Item 26 (Separation Code) – "KFS"
 - Item 27 (Reenlistment (RE) Code) – RE-3, 3C
 - Item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial
- On 18 December 1998, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service.
 - The applicant maintained that, around the time of his separation, he was experiencing family problems; he was stationed in Germany, and his wife went back to the States and refused to return
 - He confronted his chain of command and told them he needed to get a compassionate reassignment so he could be with his family; when his leadership did not support him, he became very angry; his anger led to actions that ultimately caused his discharge
 - He felt his separation was unjust because he had worked very hard and, as a result, both he and his commander received recognition; the discharge ended up tearing his family apart
- On 3 March 1999, and after conducting a records review, the ADRB voted to deny relief; the ADRB noted that, while the available service record lacked the full circumstances of the applicant's discharge, the factors identified by the applicant were not sufficiently mitigating

4. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He did not assert any condition as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 6 July 1976; he reenlisted on 4 February 1980 and 4 November 1982.
- On 13 April 1983, he accepted nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice, after he absented himself from his place of duty for almost 4 hours.
- On 26 March 1984, the Commanding General, 3rd Support Command, issued the applicant a general officer memorandum of reprimand; the GOMOR stated the applicant had had a motor vehicle accident, fled the scene, and was later determined to have been intoxicated.
- Applicant's separation packet is unavailable for review. However, his service record includes a DD Form 214 (Certificate of Release or Discharge from Active Duty), which shows he was discharged on 9 September 1985 under the provisions of AR 635-200, Chapter 10, For the Good of the Service – In Lieu of Court-Martial. His service was characterized as under other than honorable conditions (UOTHC) with separation code KFS and RE code 3, 3C.
- On 3 March 1999, the ADRB voted to deny relief. The ADRB noted that while the available service record lacked the full circumstances of the applicant's discharge, the factors identified by the applicant were not sufficiently mitigating.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was already punished for the charges that led to his discharge, and he believes this was double jeopardy. He asks the Board to check all disciplinary actions in his service record and examine how much time elapsed between the actions and his separation. He notes that JAG (Judge Advocate General officer) told him, if he signed the paperwork, there would be no trial and no jail time; the reason for signing the paperwork had to do with disrespecting a senior officer. The applicant adds that, prior to separating with an under other than honorable conditions character of service, he received two honorable discharges; he maintains those discharges should count for something. He recently filed for a service-connected disability, and they told him he would not be receiving a monetary allowance because of his adverse separation; he feels his discharge has nothing to do with his injuries.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy medical documentation of a clinical summary indicating he was treated in an inpatient facility from 4 June to 27 June 1984, and upon discharge was diagnosed with Alcohol Abuse, in remission, recommended for an intensive residential rehabilitation treatment program, and prescribed Antabuse 250 mg.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant initiated behavioral health services via the VA in May 2016, due to grief related to his mother's death. He was assigned a clinical treatment team but did not engage in services. In December 2016, the applicant requested an evaluation since he had received a DUI and was court ordered to participate in a substance use disorder (SUD) evaluation. The results of the evaluation indicated, based on the information the applicant provided, he did not meet diagnostic criteria for a substance use disorder and was not in need of SUD treatment. In March 2018, the applicant presented as a walk-in requesting a substance use disorder assessment since his driver's license was suspended due to a DUI. Upon mental health screening he endorsed depression, anger, anxiety, somatic concerns, and personality issues. He disclosed several disciplinary actions while in military service related to "alcohol, AWOL, and cursing a Colonel". He denied war zone service/combat experience, military trauma exposure, and military sexual trauma. He also denied having any repeated or upsetting thoughts or dreams about events in the military. He was diagnosed with Alcohol Use Disorder and Tobacco Use Disorder, and was recommended for substance use treatment. The applicant participated in SUD treatment from April 2018 until June 2018, then discontinued treatment.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. The applicant did not assert any condition as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant provides medical documentation showing he was treated in an inpatient facility and diagnosed with Alcohol Abuse.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Alcohol Abuse during military service. However, alcohol abuse in the absence of a mitigating BH condition would not provide mitigation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 applicant was separated for the good of the service - in lieu of court martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge. 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. Upon review of the applicant's service record, the Board determined he served a period of continuous honorable service from 6 July 1976 to 3 November 1982 and his record should reflect that service accordingly.
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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
--------------	--------------	--------------	--

:	:	:	GRANT FULL RELIEF
:XX	:XX	:XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 9 September 1985 to show in item 18 (Remarks):

- Soldier Has Completed First Full Term of Service
- Continuous Honorable Service From 19760706 Until 19821103

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service.

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. 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.
3. 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 3-7a (Honorable Discharge) stated 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 the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.
 - b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial 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.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge upon the preferral of court-martial charges; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled; understood his/her rights; could receive an under other than honorable conditions character of service; and recognized the adverse nature of such a character of service.

4. MCM, in effect at the time, showed punitive discharges were among the maximum punishments for violations of UCMJ Article 86 (AWOL for more than 30 days).

5. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 6-11 (Approved for Discharge from Service Under Other than Honorable Conditions), that when a separation authority determined that a Soldier was to be discharged from the service under other than honorable conditions, the Soldier was to be reduced to the lowest enlisted grade. Board action was not required for this reduction.

6. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Code) and 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

7. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "KFS" and have the narrative reason for separation: "For the Good of the Service – In Lieu of Court-Martial" entered on their DD Form 214.

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

a. Table 3-6 (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
- RE-3C – Soldiers who completed over 4 months of service but did not meet basic eligibility pay grade requirements needed a waiver to reenter the Armed Forces.

b. Table 4-1 (Waivable Moral and Administrative Disqualifications).

Line O (Disqualification) states prior service applicants who last separated for the good of the service required a waiver to reenter the Regular Army.

9. 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.

10. 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.

11. 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.

12. 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//