

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240011779

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for the Review of Discharge from the Armed Forces of the United States).

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 informed his discharge would be automatically upgraded after 6 months but it did not happen. It was his only offense in the military, and he has been struggling in life since then. He has now turned his life around. The applicant marked post-traumatic stress disorder (PTSD) as a condition related to his request.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 4 August 1980.
 - b. He accepted nonjudicial punishment on 22 July 1983 for one specification of assaulting Ms. MB by striking her in the buttocks.
 - c. On 17 April 1984, he was convicted by the State of North Carolina District Court for breaking, entering, and larceny on or about 7 March 1984 of multiple items a value of approximately \$3352.00. He was sentenced to imprisonment for 5 months, suspended for a period of 2 years with probation for 12 months, and a fine of \$600.00.
 - d. On 15 June 1984, the court found the applicant willfully violated the terms of his probation. He was ordered to execute the 5 months of confinement.

e. Two DA Forms 4187 (Personnel Action) changed the applicant's status as follows:

- 15 June 1984 – present for duty (PDY) to confinement civil authority
- 8 August 1984 – confinement civil authority to PDY

f. On 22 June 1984, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for conviction by a civil court.

g. On 22 June 1984, after consulting with legal counsel, he acknowledged the rights available to him, the effect of waiving said rights, and the applicant elected not to submit matters on his own behalf.

h. On 22 June 1984, the immediate commander initiated separation action against the applicant for conviction by a civil court. The reason for his proposed recommendation was for breaking, entering, and larceny, possession of stolen property, and his sentence to 5 months in prison with 2 years suspended.

i. On 30 July 1984, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 14, AR 635-200, paragraph 14-5 for conviction by a civil court. He would be issued an under other than honorable conditions characterization of service.

j. On 27 August 1984, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 11 months, and 1 day of active service with no lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar
- Army Good Conduct Medal

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. In reaching its determination, the Board can consider the applicants petition and his 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 discharge. He contends he experienced PTSD, which is related to his request for an upgrade. 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 4 August 1980; 2) The applicant accepted nonjudicial punishment on 22 July 1983 for assaulting a civilian female by striking her on the buttocks; 3) On 17 April 1984, the applicant was convicted by the State of North Carolina District Court for breaking, entering, and larceny on 7 March 1984 of multiple items a value of approximately \$3352.00. He was sentenced to imprisonment for 5 months and a fine of \$600.00; 4) The applicant was discharged on 27 August 1984, Chapter 14-5 for conviction by a civil court. His character of service was determined under other than honorable conditions with 3 years, 11 months, and 1 day of active service.

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

c. The applicant contends he experienced PTSD, 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.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, including PTSD by the VA. He does not receive service-connected disability for a mental health condition, including PTSD.

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 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 was experiencing PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD while on active service, which mitigates 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 PTSD, while on active service. In addition, there is no nexus between the applicant's reported PTSD and his misconduct of breaking and entering, larceny, and possession of stolen property in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention 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 discharge upgrade requests, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the seriousness and criminal nature of the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes,

(2) Did the condition exist or experience occur during military service? Yes,

(3) Does the condition or experience actually excuse or mitigate the misconduct? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	: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 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14, paragraph 14-5 of the regulation states an individual will be considered for discharge and the case initiated and processed through the chain of command to the general court-martial convening authority when initially convicted by civil authorities, or action is taken which is tantamount to a finding of guilty.

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 post-traumatic stress disorder (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. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, 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, on 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.

5. On 25 July 2018, 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/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 based on 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.

6. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//