

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011825

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Certificate of Release of Discharge from Active Duty) for the period ending 30 May 1985

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 after seeing his mother's health condition, he became very disturbed. His commanding officer told him the military was more important than his mother which caused him to react negatively.
3. On his DD Form 149, the applicant indicates other mental health issues are related to his request.
4. A review of the applicant's service records show:
  - a. He enlisted in the Regular Army on 6 February 1979.
  - b. DA Forms 4187 (Personnel Action) show his status changed from "Present for Duty" to "On Leave" effective 24 July 1983. His status then changed from "On Leave" to "AWOL [absent without leave]" effective 23 August 1983. His status then changed from "AWOL" to "Present for Duty" effective 25 August 1983.

c. His records are void of a separation packet containing the specific facts and circumstance surrounding his discharge process including a DD Form 458 (Charge Sheet). However, it contains the following:

(1) A Fulda [Germany] Trial Defense Service memorandum (Request for Discharge for the Good of the Service), 23 April 1985, showing after consulting with legal counsel, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial.

(2) His chain of command recommended approval for discharge in lieu of trial court-martial.

(3) On 8 May 1985, the separation authority approved separation under the provisions of Army Regulation 635-200, chapter 10. He directed his character of service be under other than honorable conditions and that he be reduced to private/E-1.

5. He was discharged on 30 May 1985. He completed 6 years, 3 months, and 21 days of active service. His DD Form 214 shows in:

- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS
- item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial)

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. 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 6 February 1979; 2) The applicant's records are void of a separation packet containing the specific facts and circumstance surrounding his discharge process including his Charge Sheet; 9) On 30 May 1985, the applicant was discharged, Chapter 10, For the Good of the Service – In Lieu of Court-Martial. His character of service was determined to be UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available 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 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.

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. In addition, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. In addition, there is insufficient evidence surrounding the events and circumstances which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he experienced a mental health condition while on active service, which mitigate his misconduct, and his contention is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the misconduct?  
N/A

**BOARD DISCUSSION:**

1. 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 the good of the service in lieu of court martial. The Board concurred with the medical advisor's review finding insufficient evidence surrounding the circumstances which resulted in the applicant's discharge to opine on possible mitigation. The Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. 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
:	:	:	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 ABCMR applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation states that the appropriate narrative reason to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with SPD Code KFS is "in lieu of trial by court-martial."
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.
  - 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 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would insure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

6. 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.

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.

//NOTHING FOLLOWS//