

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2025

DOCKET NUMBER: AR20240011829

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge
- personal 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), 18 July 2024
- DD Form 214 (Report of Separation from Active Duty), 15 April 1975
- Medical Documentation, 19 April 2024
- Character reference statement, from A.S.N., 18 July 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 states while serving he was suffering from schizoaffective disorder and had easy access to drugs. His medical condition and the ease of obtaining drugs made it impossible for him to remain sober while in the military. Since his discharge, he struggled but has been sober for 17 years.
3. On his DD Form 149, he annotates other mental health is related to this request.
4. A review of the applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 25 February 1974, for a 3-year period.
 - b. He received non-judicial punishments on:

- 17 December 1974, for absenting himself from his appointed place of duty as a sentinel on two occasions, on or about 8 December 1974, he was reduced to private/E-1
- 7 January 1975, for stealing from the exchange on or about 19 December 1974, and causing a breach of peace on or about 18 December 1974

c. He was charged with the following violations of the Uniform Code of Military Justice (UCMJ):

- On 15 January 1975, for two specifications of stealing from the exchange on or about 14 January 1975
- On 22 January 1975, for two specifications of stealing from the exchange on or about 14 January 1975
- On 25 February 1975, for two specifications of being disrespectful in language towards his superior non-commissioned officer on or about 31 January 1975, for one specification of disobeying a lawful command on or about 10 February 1975, and for one specification of damaging property of the United States on or about 28 January 1975
- On 5 March 1975, one specification of striking his superior noncommissioned officer on or about 24 February 1975

d. On 8 April 1975, he requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, discharge for the good of the service. He submitted a statement on his own behalf; however, his service record is void of this statement.

e. His chain of command recommended approval of his requested separation and that he be issued an undesirable discharge.

f. On 11 April 1975, the separation authority approved the separation in lieu of trial by court-martial and further directed an undesirable discharge be issued.

g. Accordingly, he was discharged with an UOTHC discharge on 15 April 1975. He completed 1 year, 1 month, and 21 days of net active service this period.

5. He additionally provides medical documentation dated 19 April 2024, showing his assessment of preventive health, alcohol dependence in remission, neuroleptic-induced parkinsonism, schizoaffective disorder/bipolar type, and general psychiatric examination. It lists his medication, substance use history, therapy, urine and blood tests results, and mental status evaluation. Additionally, a reference statement from A.S.N., who is requesting the applicant's discharge be upgraded.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. More specifically, the applicant contends he was suffering from Schizoaffective Disorder prior to his enlistment, which was diagnosed at a later date, and that the ease of access to drugs and his mental health problems made it impossible for him to stay sober. 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 25 February 1974, 2) he received nonjudicial punishment (NJP) on 17 December 1974 for absenting himself from his appointed place of duty as a sentinel on two occasions on or about 08 December 1974. He also received NJP on 07 January 1975 for stealing from the exchange on or about 19 December 1974 and causing a breach of the peace on or about 18 December 1974, 3) He was charged with the following violations of the UCMJ: on 15 January 1975, for two specifications of stealing from the exchange on or about 14 January 1975; on 22 January 1975, for two specifications of stealing from the exchange on or about 14 January 1975; on 25 February 1975, for two specifications of being disrespectful in language towards his superior non-commissioned officer on or about 31 January 1975; for one specification of disobeying a lawful command on or about 10 February 1975; for one specification of damaging property of the United States on or about 28 January 1975; on 5 March 1975, one specification of striking his superior noncommissioned officer on or about 24 February 1975, 4) on 8 April 1975, he requested discharge under the provisions of AR 635-200, Chapter 10, discharge for the good of the service. He was discharged on 15 April 1975, with an SPD of 'KFS' and reentry code of 'RE-4.'

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. The applicant's DA Form 4 (Enlistment Contract-Armed Forces of the United States) dated 25 February 1974 shows his PULHES as 111111, indicating there were no BH concerns identified at the time of enlistment. The applicant's Record of Proceedings dated 07 January 1975 shows one of his charges as "cause a breach of the peace by wrongfully shouting and singing in a public place." His Charge Sheet dated

25 February 1975, in part, shows the applicant disobeyed a lawful command, noting he had been told to “stop whistling and writing on the walls,” and willfully disobeyed the same.

d. A review of JLV was void of medical information. There is no documentation that the applicant is service-connected through the VA for any conditions and there were no VA medical records available for review. It is of note that his UOTHC discharge renders him ineligible for VA services.

e. The applicant included civilian medical records as part of his application. A psychiatric progress note from Nystrom & Associates dated 19 April 2024 shows his diagnoses as Alcohol Dependence, In Remission, Neuroleptic-Induced Parkinsonism, and Schizoaffective Disorder, Bipolar Type. The evaluating provider documented that he had a “long-standing history of depression, elevated moods, psychosis, and a history of alcohol dependence.” It was noted that his elevated mood/manic symptoms started at age 19 and included an increase in motor activity, pressured speech, racing thoughts, significant grandiosity, insomnia with a decreased need for sleep, possible sexual indiscretion, financial indiscretion, impulsive behaviors, distractibility, and irritability. It was also documented that he reported the onset of psychotic symptoms started at age 19, noting he reported experiencing auditory and visual hallucinations, which were elaborated upon by his wife. The onset of his depressive symptoms was not specified. Regarding his history of alcohol use, it was noted that he reported he began drinking heavily at age 17 years old, which continued for about 35 years. He also reported a history of cannabis use, acid, and speed, noting a history of DUI in his 20’s for possession of cannabis. It was also documented that he reported a history of numerous psychiatric hospitalizations in his lifetime, 5-10, beginning at age 25 and the last occurring at age 58. He was prescribed Divalproex (mood stabilizer), Duloxetine (antidepressant), Mirtazapine (antidepressant), and Risperidone (antipsychotic) for treatment of Schizoaffective Disorder.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant exhibited symptoms consistent with an underlying BH condition in-service. Review of records from 2024 shows that the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type by a non-VA/civilian BH provider since being discharged from the military, with the provider documenting that he reported an onset of manic and psychotic symptoms at age 19. This Advisor would contend that the applicant’s misconduct is partially mitigated by his diagnosis of Schizoaffective Disorder, Bipolar Type.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type by a non-VA/civilian BH provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type by a non-VA/civilian BH provider.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no military medical records available for review and the applicant is not service-connected through the VA for any conditions. Civilian BH records from 2024 show the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type, noting the onset of his manic and psychotic symptoms at age 19, which coincides with his time in the military. Although there were no military medical records available for review, his service records are indicative of behaviors that are signs of possible underlying BH symptoms/early onset of a BH condition. More specifically, the applicant's misconduct of causing a breach of the peace by wrongfully shouting and singing in a public place and disobeying a lawful command to stop whistling and writing on the walls are indicative of behaviors that are likely consistent with symptoms of mania and/or psychosis. As there is an association between irritability, increase in goal-directed behavior, oppositionality, and symptoms of mania, there is a nexus between the applicant's misconduct of being disrespectful in language towards an NCO and disobeying a lawful command and his diagnosis of Schizoaffective Disorder, Bipolar Type. However, theft, assault, and damaging property are not part of the natural history and sequelae associated with mania or psychosis. Moreover, there is insufficient medical evidence at the time of the misconduct showing that the applicant was in a severe, acute manic or psychotic state such that he had insufficient reality testing. Thus, BH mitigation would not be supported for his misconduct of damaging property of the United States, striking his superior NCO, and stealing from the exchange. As such, there is support for partial BH mitigation for his misconduct of disobeying a lawful command and being disrespectful in language to his superior NCO.

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 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 evidence of record establishes that the applicant engaged in numerous acts of misconduct. As a result, the applicant's commander initiated separation proceedings in accordance with the governing regulation. Following consultation with counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial. Accordingly, the applicant was discharged under the applicable regulatory authority. The Board reviewed the medical advisory opinion but did not concur with its conclusions. The advisory noted sufficient evidence that the applicant exhibited symptoms consistent with an underlying behavioral health condition during service. Further review of post-service records from 2024 confirms that the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type, by a non-VA/civilian behavioral health provider. The provider documented that the applicant reported an onset of manic and psychotic symptoms at age 19, which aligns with the applicant's period of military service.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type by a non-VA/civilian BH provider.

b. Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type by a non-VA/civilian BH provider.

c. Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no military medical records available for review and the applicant is not service-connected through the VA for any conditions. Civilian BH records from 2024 show the applicant has been diagnosed with Schizoaffective Disorder, Bipolar Type, noting the onset of his manic and psychotic symptoms at age 19, which coincides with his time in the military. Although there were no military medical records available for review, his service records are indicative of behaviors that are signs of possible underlying BH symptoms/early onset of a BH condition. More specifically, the applicant's misconduct of causing a breach of the peace by wrongfully shouting and singing in a public place and disobeying a lawful command to stop whistling and writing on the walls are indicative of behaviors that are likely consistent with symptoms of

mania and/or psychosis. As there is an association between irritability, increase in goal-directed behavior, oppositionality, and symptoms of mania, there is a nexus between the applicant's misconduct of being disrespectful in language towards an NCO and disobeying a lawful command and his diagnosis of Schizoaffective Disorder, Bipolar Type. However, theft, assault, and damaging property are not part of the natural history and sequelae associated with mania or psychosis. Moreover, there is insufficient medical evidence at the time of the misconduct showing that the applicant was in a severe, acute manic or psychotic state such that he had insufficient reality testing. Thus, BH mitigation would not be supported for his misconduct of damaging property of the United States, striking his superior NCO, and stealing from the exchange. As such, there is support for partial BH mitigation for his misconduct of disobeying a lawful command and being disrespectful in language to his superior NCO.

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
:	:	:	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.

//SIGNED//

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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, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

5. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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//