

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240012110

APPLICANT REQUESTS:

- an upgrade of his under other than honorable discharge
- a personal appearance hearing before the Board

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)

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 injured in a jump at Fort Bragg in which he broke his neck. He returned home to see family. His service was positive until he left from a concussion.
3. A review of the applicant's records show:
 - a. He enlisted in the Regular Army on 13 June 1983.
 - b. Headquarters, U.S. Army Infantry Center, Fort Benning, GA Permanent Orders 211-21, 10 November 1983, awarded him the Parachutist Badge effective 10 November 1983.
 - c. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 25 January 1984, for being absent without leave (AWOL) from his unit from on or about 5 January 1984 until on or about 12 January 1984. His punishment was reduction to the grade of private/E-1, forfeiture of \$200.00 for two months, and 30 days in the correctional custody facility. He did not appeal.

d. DA Forms 4187 (Personnel Action) show his status changed from "Present for Duty" to "AWOL" effective 23 May 1984. His status then changed from "AWOL" to "Dropped from the Rolls (DFR)" effective 22 June 1984. His status then changed from "DFR" to "Present for Duty" effective 9 February 1987 as a result of being apprehended by civilian authorities.

e. Court-martial charges were preferred against him on 25 February 1987, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows, he was charged with a specification of violation of Article 86, in that he did on or about 23 May 1984 without proper authority and did remain so until on or about 9 February 1987.

f. After consulting with legal counsel on 25 February 1987, 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.

(1) He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

(2) He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge.

g. His chain of command recommended his request for discharge under the provisions of Army Regulation 635-200, chapter 10, be approved with an under other than honorable conditions discharge on 3, 4, and 5 March 1987.

h. The approval authority approved the applicant's request for discharge on 5 March 1987, in lieu of trial by court-martial, that he be reduced to the lowest enlisted grade, and that he be issued an under other than honorable conditions discharge certificate.

i. The applicant was discharged on 6 April 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 year, 1 month, and 8 days
- 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)
- item 29 (Dates of Time Lost During This Period) – 23 May 1984 through 8 February 1987 (a period of 2 years, 8 months, and 17 days)

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

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Other Than Honorable Conditions. He contends that this is warranted due to his injuries and his service in Grenada. He further contended that his service was positive until after he sustained a concussion. Any mental health diagnoses were reviewed by ARBA Medical Reviewer with mental health expertise.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army Reserve 19Apr1983 and entered the Regular Army on 13Jun1983. His DD 214 does not show foreign service. His MOS was 94B Food Service Specialist. He was discharged 06Apr1987 under provisions of AR 635-200, chapter 10 for the good of the service in lieu of court-martial. He was AWOL from 23May1984 and dropped from the roll 22Jun1984. He was returned to military control on 09Feb1987. His service was characterized as Under Other Than Honorable Conditions.

3. The applicant indicated that he injured his neck during a free jump, and he sustained an injury at Fort Bragg requiring for him to be in a rotating bed for 10 months. And finally, he mentioned sustaining a concussion. VA records in JLV start in July 2024. During the 15Jul2024 Social Work Note/Homeless Assessment Note (VAMC), the applicant reported going AWOL after his neck injury. He also endorsed having participated in combat.

4. The applicant did not submit any service treatment records for review. There were no records in iPERMS. The Disposition Form dated 03Mar1987 indicated that the applicant had been physically and mentally cleared for separation. Based on the records available for review, there was insufficient evidence to support that the applicant had physical medical conditions which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. Concerning the request for discharge upgrade, Liberal consideration guidance policy was considered.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant reported an injury requiring a lengthy recovery in bed.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant reported an in-service injury requiring a lengthy bedridden recovery.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Beyond the applicant's report, there were no records documenting any injury while in active service. Therefore, there was insufficient medical evidence to support a nexus between his reported injuries, and the AWOL behavior which led to the chapter separation. That notwithstanding, the applicant contends that in service physical injuries contributed to his discharge, and under Liberal Consideration, the applicant's contention alone is sufficient for the Board's consideration for the discharge upgrade.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable.

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:

- The applicant enlisted into the Regular Army on 13 June 1983.
- Court-martial charges were preferred against him on 25 February 1987, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows, he was charged with a specification of violation of Article 86, in that he did on or about 23 May 1984 without proper authority and did remain so until on or about 9 February 1987. The applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial.
- The applicant was discharged on 6 April 1987 and was credited with 1 year, 1 month, and 8 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he fought and served in Grenada and injured his neck during a free jump. He stated his service was positive until he left from a concussion. The application did not include any mental health or medical records. There was insufficient evidence that the applicant was diagnosed with a physical or mental health condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated homeless services through the VA in 2024. The assessment does not indicate any mental health symptoms or diagnoses, and there was no medical documentation available to review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had a concussion as a result of a free jump, and he experienced a neck injury, which led to his misconduct. The application did not contain any medical or mental health records, and a review of VA records only showed that the applicant had utilized homeless services in 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mitigating condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health or medical conditions while on active service. There is insufficient evidence, beyond self-report, that the applicant suffered from a neck injury or concussion during his time in service. However, the applicant contends he was experiencing a condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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, medical advisor's review 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 charged with being absent without leave from 23 May 1984 to 9 February 1987, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence and concurred with the medical advisor's reviews finding insufficient evidence to support that the applicant had physical medical conditions which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge and insufficient evidence to support that the applicant had a BH condition or experience that mitigates his misconduct. 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. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration for behavioral health:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a concussion as a result of a free jump, and he experienced a neck injury, which led to his misconduct. The application did not contain any medical or mental health records, and a review of VA records only showed that the applicant had utilized homeless services in 2024.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mitigating condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health or medical conditions while on active service. There is insufficient evidence, beyond self-report, that the applicant suffered from a neck injury or concussion during his time in service. However, the applicant contends he was experiencing a condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration for medical conditions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant reported an injury requiring a lengthy recovery in bed.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant reported an in-service injury requiring a lengthy bedridden recovery.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Beyond the applicant's report, there were no records documenting any injury while in active service. Therefore, there was insufficient medical evidence to support a nexus between his reported injuries, and the AWOL behavior which led to the chapter separation. That notwithstanding, the applicant contends that in service physical injuries contributed to his discharge, and under Liberal Consideration, the applicant's contention alone is sufficient for the Board's consideration for the discharge upgrade.

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

4. 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:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ 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.



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. 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.

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.

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, Boards 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.

//NOTHING FOLLOWS//