

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240012993

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge
- a video or telephone hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 26 September 2024
- letter of support, 5 September 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 indicates on his DD Form 149 that other mental health issues or conditions are related to his request. He states he was suffering from depression and misled by his command. He was told if he used marijuana he could be dismissed. He was told to leave the unit but return within 30 days so he would not be considered absent without leave (AWOL).
3. The applicant provides a letter of support from a Bishop of his church, attesting to his character, leadership, and community involvement.
4. A review of the applicant's records show the following:
  - a. On 30 May 1996, he enlisted in the Regular Army for 3 years, following a period of service in the U.S. Army Reserve.
  - b. On 19 May 1997, he surrendered to military authorities at Fort Stewart, GA. A telephone or verbal conversation record shows he was reported AWOL on 25 March 1997 and he was dropped from the rolls on 28 April 1997.

c. The applicant's separation packet reflecting the facts and circumstances of his discharge from the Army are not available for review.

d. Orders issued from Fort Knox show he was assigned to the Army Transition Center with a reporting date of 25 September 1997.

e. On 25 September 1997, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b with an under other than honorable conditions characterization of service. He completed 1 year, 2 months, and 15 days' of net active service this period. He had time lost for two periods:

- 20 days, 5 March 1997 to 24 March 1997
- 21 days, 28 April 1997 to 18 May 1997

4. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

5. 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.

6. 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. 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 30 May 1996, 2) he surrendered to military authorities on 19 May 1997. A telephone or verbal conversation record shows he was reported as being absent without leave (AWOL) on 25 March 1997 and was dropped from the rolls on 28 April 1997, 3) the applicant's separation packet reflecting the specific facts and circumstances of his discharge from the Army are not available for review, 4) the applicant was discharged on 25 September 1997 under the provisions of AR 635-200, paragraph 14-12b, by reason of Misconduct, with a separation code of 'JKA' and reentry code of '3.' He had time lost for two periods: from 5 March 1997 to 24 March 1997 and from 28 April 1997 to 18 May 1997.

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. An in-service Report of Medical Examination dated 27 April 1995 for the purposes of enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. There were no other military medical records available for review.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. There were no VA behavioral health records available for review and the applicant did not provide any VA or civilian BH records for review as part of his application.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no military or civilian behavioral health records available for review and the applicant provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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, 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 Board noted the applicant's extensive period of being absent without authority for a total of 41 days. In addition, the Board concurred with the medical advisor's review finding insufficient evidence to support the applicant's request. The Board determined there was no error or injustice in the characterization of service he received at the time of his discharge and denied his request.

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:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no military or civilian behavioral health records available for review and the applicant provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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. 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.

[REDACTED]

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 Army Board for Correction of Military Records 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.
  - a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. 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 635-200 (Personnel Separations – Enlisted Personnel) sets forth 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

5. 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.

6. 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//