

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240013147

APPLICANT REQUESTS:

- In effect, reconsideration of his previous requests to upgrade his under other than honorable conditions discharge to an honorable character of service
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Two letters of support
- Two Memorial Services Pamphlets
- Behavioral health medical records, 3 pages

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20220006398 on 9 March 2023, and AR20230012641 on 10 May 2024.

2. The applicant states, in effect:

- He never had any trouble while in the service until his sergeant found out he was gay; his sergeant overheard the applicant talking about the 1-year anniversary of his father's and brother's deaths, and that he (the applicant) could not stay in "his" Army
- He declares that he wanted to be in the Army, but he experienced name calling; he notes that, in the 1980s, you could not be a homosexual in the Army
- On his application, he has checked blocks for other mental health conditions, sexual assault/harassment, and reprisal/whistleblower

3. The applicant provides:

- Two letters of support, respectively from Mr. A__ J__ and Mr. J__ J__, who both affirm the applicant is an honest, loyal, and "down-to-earth" individual who is always willing to help others; "[Applicant] is one of the few good people in the world"
- Two pamphlets pertaining to the memorial services for the applicant's father and brother, both of whom passed away in 1979
- Behavioral health medical records, dated in 2016, which show diagnoses for major depressive disorder and chronic post-traumatic stress disorder

4. A review of the applicant's service records show the following:

- On 9 November 1978, the applicant enlisted into the Arkansas Army National Guard (ARARNG) for 6 years; on 10 January 1979, he entered initial active duty for training
- On 28 April 1979, and following the award of military occupational specialty 36C (Wire Systems Installer), the Army honorably released him from active duty and returned him to the ARARNG
- On 25 October 1979, Fifth U.S. Army orders called the applicant to active duty for 19 months and 26 days; his reporting date was 10 January 1980, and the orders cited Title 10 (Armed Forces), U.S. Code, section 673a (Ready Reserve – Involuntary Call to Active Duty) as its authority
- On 15 September 1980, the applicant accepted nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), after he failed to report, on 23 August 1980, for a battalion formation
- On 15 September 1980, the applicant's command preferred court-martial charges against him for the following UCMJ violations:
 - Article 86 (Failure to Report to a Place of Duty at the Time Prescribed) three specifications – failure to report to formations on 1 and 20 August 1980
 - Article 91 (Disrespectful Language toward a Noncommissioned Officer (NCO)), four specifications – being disrespectful three times to a staff sergeant (SSG) and once to a sergeant
 - Article 91 (Willful Disobedience of an NCO's Order) – the applicant disobeyed an SSG's order to "be at ease"
- On 10 October 1980, after consulting with counsel, the applicant requested separation under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He received and acknowledged all of his rights

- On or about 30 October 1980, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; he additionally ordered the applicant's reduction to private (PV1)/E-1
- On 7 November 1980, a doctor completed a Report of Mental Status Evaluation (DA Form 3822-R), pertaining to the applicant; the report indicated the applicant met the medical retention standards outlined in AR 40-501 (Standards of Medical Fitness)
- On 19 November 1980, the Army separated the applicant under other than honorable conditions; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 10 months and 10 days of his 19-month, 26-day term of obligated service; the report additionally reflects the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – "None"
 - Item 25 (Separation Authority) – chapter 10, AR 635-200
 - Item 26 (Separation Code) – "JFS"
 - Item 27 (Reenlistment (RE) Code) – RE-3
 - Item 28 (Narrative Reason for Separation) – "Administrative Discharge Conduct Triable by a Court-Martial"
- On 21 March 2022, the applicant petitioned the ABCMR, requesting an upgraded character of service
 - The applicant indicated he suffered from uncontrollable and severe depression
 - The Army Review Boards Agency (ARBA) Medical Advisor reviewed the applicant's case and concluded the evidence was insufficient to show the applicant had incurred a condition or experience that mitigated his misconduct
 - On 9 March 2023, the Board denied the applicant's request
- On 2 August 2023, the applicant requested reconsideration
- On 10 May 2024, the Board determined there was not enough evidence to warrant a change to its previous decision; however:
 - One Board member noted that a significant amount of time had elapsed and the applicant's misconduct was minor
 - That Board member voted to upgrade the applicant's character of service to under honorable conditions (General); the remaining two members voted to deny relief

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends that he experienced mental health conditions and reprisal due to his sexual orientation 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 Arkansas Army National Guard (ARARNG) on 9 November 1978 and entered active duty status for training from 10 January 1979 until 28 April 1979; 2) The applicant was then put on active status again with the report date of 10 January 1980; 3) On 15 September 1980, he accepted NJP for a failure to report to formation; 4) On 15 September 1980, court-martial charges were preferred against the applicant due to UCMJ violations of Article 86 and 91 consisting of: 3 specifications of failing to report to his place of duty (Article 86), 4 specifications of disrespectful language, and 1 specification of disobeying a lawful order (Article 91); 5) The applicant was discharged on 19 November 1980, AR 635-200, Chapter 10- Administrative Discharge Conduct Triable by a Court-Martial. His character of service was under other than honorable conditions. He completed 10 months and 10 days of net active service this period. 6) The applicant previously petitioned the ABCMR requesting relief on 21 March 2022 and 02 August 2023. However, the Board determined that in the absence of additional information to the contrary, the applicant's discharge was determined to be fair and equitable.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and civilian medical records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD and reprisal due to his sexual orientation, 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 or was the subject of reprisal due to his sexual orientation beyond self-report. On 07 November 1980, the applicant underwent a mental status evaluation conducted by a medical provider, which cleared him for continued administrative separation procedures from a mental health perspective.

d. A review of JLV did not reveal any additional results. The applicant has not been diagnosed with a service-connected mental health condition and does not receive any service-connected disability. On 13 May 2016, the applicant was diagnosed with Major Depressive Disorder, Recurrent, Moderate and Posttraumatic Stress Disorder, Chronic by a civilian mental health provider. This was documented on 26 February 2025 by his civilian provider on hardcopy records provided by the applicant. His civilian mental

health providers did not directly connect his mental health symptoms/conditions to his military service.

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.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD and reprisal due to his sexual orientation during his time in service, which mitigates his misconduct. The applicant was diagnosed with Major Depressive Disorder, Recurrent, Moderate and Posttraumatic Stress Disorder, Chronic by a civilian mental health provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD and reprisal due to his sexual orientation while on active service. The applicant was diagnosed with Major Depressive Disorder, Recurrent, Moderate and Posttraumatic Stress Disorder, Chronic by a civilian mental health provider. However, there was insufficient evidence that this was directly connected to his military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant has been diagnosed with or treated for PTSD connected to his military service or any direct evidence of reprisal due to his sexual orientation beyond self-report. The applicant did engage in avoidant and erratic behavior during active service such as failing to follow orders, failing to report to formation, and using disrespectful language. These behaviors can be natural sequelae to some mental health conditions, including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced a mental health condition or experience while on active service and reprisal that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency

determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical advisory the Board concurred with the advising 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.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD and reprisal due to his sexual orientation during his time in service, which mitigates his misconduct. The applicant was diagnosed with Major Depressive Disorder, Recurrent, Moderate and Posttraumatic Stress Disorder, Chronic by a civilian mental health provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD and reprisal due to his sexual orientation while on active service. The applicant was diagnosed with Major Depressive Disorder, Recurrent, Moderate and Posttraumatic Stress Disorder, Chronic by a civilian mental health provider. However, there was insufficient evidence that this was directly connected to his military service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence the applicant has been diagnosed with or treated for PTSD connected to his military service or any direct evidence of reprisal due to his sexual orientation beyond self-report. The applicant did engage in avoidant and erratic behavior during active service such as failing to follow orders, failing to report to formation, and using disrespectful language. These behaviors can be natural sequelae to some mental health conditions, including PTSD. However, the presence of misconduct is not sufficient evidence of a mental health condition. Yet, the applicant contends he experienced a mental health condition or experience while on active service and reprisal that mitigates his misconduct, and the applicant's contention is sufficient for consideration per the Liberal Consideration Policy.

3. The Board noted the applicant's letters of support attesting to his character, memorial pamphlets for his deceased family members, and post-service behavioral health records diagnosing major depressive disorder and chronic PTSD in 2016. Despite his submissions, the Board found insufficient evidence to establish a nexus between the applicant's misconduct and the claimed mental health conditions or discrimination. His service records show that he was called to active duty in January 1980 and subsequently faced multiple violations of the Uniform Code of Military Justice, including repeated failures to report for duty, disrespectful language toward

noncommissioned officers, and willful disobedience. The Board acknowledges the applicant's post-service diagnoses and the societal context of the 1980s regarding LGBTQ+ service members, however, the evidence does not demonstrate that these factors mitigated the misconduct that led to his discharge. The Board agreed that the characterization of service was appropriate and equitable at the time of separation. Therefore, relief is denied.

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:

<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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220006398 on 9 March 2023, and AR20230012641 on 10 May 2024.

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 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-13a (Honorable Discharge) stated an honorable character of service represented a separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 1-13b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), Paragraph 5-3 (Authority). The separation of enlisted personnel was the prerogative of the Secretary of the Army. The discharge of any enlisted member of the Army for the convenience of the government was to be at the Secretary's discretion, with the issuance of an honorable or a general discharge certificate, as determined by the Secretary.

d. Chapter 10 (Discharge for the Good of the Service) applied to Soldiers who had committed an offense or offenses for which the punishment under the Manual for Courts-Martial and Uniform Code of Military Justice (UCMJ) included a punitive (i.e., bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. Commanders were to give the Soldier a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier made his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service. Consulting counsel was to sign the request as a witness.

3. The Manual for Courts-Martial, in effect at the time, showed a punitive discharge was among the maximum punishments for violations Article 91 (Willfully Disobeying a Noncommissioned Officer's Order).

4. AR 600-200 (Enlisted Personnel Management), in effect at the time, stated in paragraph 7-64c (Approved for Discharge from Service Under Other Than Honorable Conditions) that, upon determination by a general court-martial convening authority (GCMCA) that a Soldier was to be discharged under other than honorable conditions, the GCMCA was to direct that Soldier's reduction to the lowest enlisted grade.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 (Certificate of Release or Discharge from Active Duty) preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in items 26 (Separation Code) and 28 (Narrative Reason for Separation).

b. For the reenlistment (RE) code in item 27, preparers were to review AR 601-280 (Army Reenlistment Program).

6. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive an SPD of "JFS" and have, "Administrative Discharge – Conduct Triable by Court-Martial" entered in item 28 of their DD Form 214.

7. AR 601-280 (Army Reenlistment Program), in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Paragraph 2-23a (5) (Persons Ineligible for Immediate Reenlistment) stated Soldiers who had been separated under the provisions of chapter 10, AR 635-200 were not eligible for immediate reenlistment but could apply for Regular Army enlistment at a later date, per AR 601-210 (Regular Army Enlistment Program).

b. Appendix D (Reenlistment Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

8. 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 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.

9. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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 to 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.

10. 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, 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.

11. The Army implemented the Don't-Ask-Don't-Tell (DADT) policy in 1993 during the Clinton administration; this policy banned the military from investigating service members about their sexual orientation.

a. Service members could be investigated and administratively discharged if they made a statement that they were lesbian, gay, or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

b. A memorandum by the Under Secretary of Defense (Personnel and Readiness) memorandum, dated 20 September 2011, subject: Correction of Military Records Following Repeal of Section 654 (Policy Concerning Homosexuality in the Armed Forces) of Title 10, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs).

(1) The memorandum states that, effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests for upgrade of an adverse character of service when the separation was based on DADT or comparable policies; Boards can make the following changes:

- Change narrative reason for separation to "Secretarial Authority" and SPD code to "JFF"
- Revise character of service to honorable
- Amend RE code to an immediately-eligible-to-reenter (i.e. RE-1)

(2) For Board to grant upgrades, the circumstances of an applicant's separation must meet the following criteria:

- The original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and
- There were no aggravating factors in the record, such as misconduct

(3) The memorandum further states that, although Boards must evaluate each request on a case-by-case basis, the award of an honorable or a general discharge normally indicates the absence of aggravating factors.

(4) The memorandum recognized that, although BCM/NRs have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs, it is Department of Defense (DOD) policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted.

(a) Although DADT is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law.

(b) Similarly, DOD regulations implementing various aspects of DADT (or prior policies) were valid regulations during those same or prior periods.

(c) Thus, Boards should not consider the issuance of a discharge under DADT (or prior policies), by itself, as constituting an error or injustice sufficient to invalidate an otherwise properly taken discharge action.

12. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//