

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 September 2025

DOCKET NUMBER: AR20250000245

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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, his grandmother's illness and ultimate death, his divorce, and his alcohol abuse during these life events were factors that led to his misconduct.
3. A review of the applicant's service records shows:
  - a. The applicant enlisted in the Regular Army on 7 September 1999.
  - b. DA Forms 4187 (Personnel Action) reflect his duty status changed as follows:
    - From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 3 September 2000
    - From AWOL to Dropped from Rolls (DFR), effective 3 October 2000
  - c. DD Form 616 (Report of Return of Absentee) reflects the applicant surrendered to military authorities in Fort Sill, Oklahoma on 2 January 2001 and was later transferred to the Personnel Confinement Facility, Fort Sill, Oklahoma.
  - d. The DD Form 458 (Charge Sheet) filed in his service file, undated, shows court martial charges were preferred for, without authority, absencing himself from his organization from on or about 3 September 2000 until on or about 5 October 2000.

e. The complete facts and circumstance related to the applicant's discharge are not available for review however, his DD Form 214 shows:

- He was discharged on 6 December 2001 under other than honorable conditions under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 10, In Lieu of Trial by Court--Martial
- He completed 1 year, 10 months, and 18 days net active service this period
- He had lost time from 3 September 2000 to 2 January 2001

4. The applicant was asked, via letter from Case Management Division, dated 19 May 2025, to provide a copy of the medical documents that support his Post-Traumatic Stress Disorder (PTSD) AND Other Mental Health issues. As of the date of this writing, medical documents have not been received.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

6. Army Regulation 635-200 states, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge 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.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he was experiencing mental health conditions including PTSD, which 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 7 September 1999; 2) Court-martial charges were preferred against the applicant for being AWOL from 3 September-5 October 2000; 3) The complete facts and circumstance related to the applicant's discharge are not available for review. However, his DD Form 214 was available for review; 4) The applicant was discharged on 6 December 2001, Chapter 10, In Lieu of Trial by Court—Martial with a under other than honorable conditions characterization of service. He completed 1 year, 10 months, and 18 days with lost time from 3 September 2000-2 January 2001.

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 including PTSD, 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 including PTSD, and he does not receive any service-connected disability for a mental health condition including PTSD.

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 which 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 mental health conditions including PTSD, which mitigate his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigate his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, which could be a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence surrounding the complete facts and circumstance related to the applicant's discharge to provide a complete opine. Yet, the applicant contends he was experiencing a mental health condition or an experience which mitigates his misconduct, and per Liberal Consideration the contention alone 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, 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 3 September 2000 to 2 January 2001, 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 concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated 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. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service, which mitigate his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did engage in avoidant behavior such as going AWOL, which could be a natural sequela to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. In addition, there is insufficient evidence surrounding the complete facts and circumstance related to the applicant's discharge to provide a complete opine. Yet, the applicant contends he was experiencing a mental health condition or an experience which mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

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	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. Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit

of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

4. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

//NOTHING FOLLOWS//