

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 July 2023

DOCKET NUMBER: AR20220012049

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge
- restoration of his rank/pay grade of specialist four/E-4 (SP4)
- correction of his duty status to reflect false imprisonment rather than absent without leave (AWOL)
- acknowledgement and compensation for his post-traumatic stress disorder (PTSD) and other mental and physical disabilities

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for Review of Discharge from the Armed Forces of the U.S.)
- Self-authored affidavit
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 2A (Personnel Qualification Record (PQR), Part I)
- DA Form 2-1 (Personnel Qualification Record (PQR), Part II)
- Letter from Office of the Public Defender, City of Alexandria, Alexandria, VA
- Letter from INOVA Alexandria Hospital, Medical Records Department, Alexandria, VA
- Court transcript extract (4 pages)
- Letter from ForensicDx, Windber, PA

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect:

a. He was never AWOL and the documents in his record pertaining to AWOL are all fraudulent to hide the fact that he was falsely imprisoned by his company commander for no reason at all. During his period of service, he developed PTSD as a result of being a victim of racism, false imprisonment, physical and emotional abuse, home invasion, reprisal, and two attempted sexual assaults by other prisoners.

b. When he joined the Army, he volunteered for airborne training so he could be assigned to the 82nd Airborne Division located at Fort Bragg, NC, and continue his relationship with his high school girlfriend.

c. His company commander subjected him to racist badgering on a regular basis. The fact that he did not respond to his commander's racist attacks led to him being reassigned to another unit. The company commander at the new unit also subjected him to racial bias and only assigned him menial tasks such as painting and sweeping.

d. In addition to enduring this harassment at work, he went home unexpectedly one day and caught his girlfriend in bed with another man. Afterward, the girlfriend and her mother went to his unit and informed his company commander that they were afraid of him. The commander used this as a reason to justify and escalate the racist treatment by giving him an ultimatum of either moving into the barracks or being locked up in the county jail. On 17 April 1985, without any charge or due process, he was placed in shackles and handcuffs and taken to jail, where he remained for approximately three months.

e. He attempted to remedy the situation by calling the Fort Bragg hotline on numerous occasions but got no response. His company commander instructed him to remain in jail while he tried to look for some charges to justify him being there. He decided to take matters into his own hands by escaping custody on 2 July 1985. The military police (MP) found out where he was living and invaded his home, which forced him to flee for his life. Afterward, the MPs took all his belongings from the home. On 9 September 1985, he turned himself in and was given the ridiculous ultimatum of either going back to jail or being released from the Army.

f. Following his separation from the Army, on 12 June 1987, he was convicted (via conspiracy) for the rape of a person with blood type "O." He recently discovered the alleged victim has blood type "B-Negative." In other words, the person with blood type "O" whom he was convicted of raping does not exist and he has spent the past 36 years in a prison cell for no reason. His conviction was the result of a racially motivated conspiracy.

3. On 17 August 1981, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of initial entry training and the Basic Airborne course, he was

assigned to a unit at Fort Bragg, NC. He was promoted to the rank/grade of SP4/E-4 on 1 October 1983.

4. On 3 August 1984, he reenlisted for a period of 3 years.
5. On 10 January 1985, an administrative flag was imposed against the applicant for pending adverse action.
6. A State of North Carolina Release Order shows the applicant was released on bond on 14 March 1985 and ordered to appear before the Cumberland County District Court on 3 April 1985 for charges of Trespassing and Assault on a female.
7. The applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 28 March 1985 for pre-trial confinement.
8. On 17 April 1985 he escaped from pre-trial confinement and his duty status was changed from CMA to AWOL. The same day, the applicant's company commander sent a letter to the applicant's mother informing her of his AWOL status and the potential consequences of his actions. She was asked to urge the applicant to return immediately to military control.
9. On 24 April 1985, the applicant's first sergeant went to his off-post residence to inventory and secure his military clothing and equipment. It was noted that most of his initial issue and personal clothing were recovered.
10. On 3 May 1985, a warrant was issued for the applicant's arrest for orally communicating a threat via telephone to ■■■ that he was going to kill him.
11. On 10 May 1985, a warrant was issued for the applicant's arrest for orally communicating a threat via telephone to ■■■ that he was going to kill her and/or her husband.
12. On 10 May 1985, the applicant's company commander sent a letter to the applicant's mother informing her the applicant had been dropped from the unit's rolls and classified as a deserter from the U.S. Army. Civilian and military law enforcement agencies had been notified of his status and were requested to apprehend him. Once again, the commander asked the applicant's mother to encourage him to return to military control.
13. On 17 May 1985, the applicant's duty status was changed from AWOL to Dropped from Rolls (DFR).

14. A Standard Form 600 (Chronological Record of Medical Care), dated 21 May 1985, shows the applicant's original treatment records had been missing from the Troop Medical Clinic since 28 January 1985 when they were signed out for the Orthopedic Clinic.

15. The applicant was apprehended by military authorities on 2 July 1985, processed and released to his unit. His duty status was changed from DFR to PDY, and he was held pending trial by court-martial.

16. A State of North Carolina Release Order shows the applicant was released on bond on 26 July 1985 and ordered to appear before the Cumberland County District Court on 12 August 1985 for charges of Communicating Threats and Telephonic Harassment.

17. A DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant on 26 July 1985 for the following violations of the Uniform Code of Military Justice (UCMJ):

- Charge I - Article 92, Specification: dereliction in the performance of duties on or about 10 January 1985
- Charge II - Article 86, Specification: going from his appointed place of duty on or about 12 March 1985
- Charge III - Article 90,
 - Specification 1: willfully disobeying a lawful command from a superior commissioned officer on or about 18 March 1985
 - Specification 2: willfully disobeying a lawful command from a superior commissioned officer on or about 21 March 1985
- Charge IV - Article 95, Specification: escaping from confinement on or about 8 April 1985
- Charge V - Article 85, Specification: being AWOL from on or about 8 April 1985 until on or about 2 July 1985

18. On 26 July 1985, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf.

19. The applicant's chain of command recommended approval of the Chapter 10 request, with a service characterization of UOTHC.

20. On 23 August 1985, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the applicant be reduced to the lowest enlisted grade and issued a DD Form 794A (UOTHC Discharge Certificate).

21. Orders and the applicant's DD Form 214 confirm he was reduced to the rank/grade of private/E-1 (PV1) and discharged on 9 September 1985, under the provisions of Army Regulation 635-200, Chapter 10, "For the Good of the Service - In Lieu of Trial by Court-Martial" with Separation Program Designator (SPD) code "KFS" and Reentry codes "3, 3B, and 3C." He was credited with completing 3 years, 9 months, and 19 days of net active service this period.

a. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the:

- Army Good Conduct Medal
- Noncommissioned Officer Professional Development Ribbon with Numeral 1
- Army Service Ribbon
- Parachutist Badge
- Expert Marksmanship Qualification Badge with M-16 and Hand Grenade Bars

b. Item 18 (Remarks) shows, "Immediate reenlistments this period 810817-840802" [17 August 1981 to 2 August 1984].

22. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his discharge. On 26 February 1987, he was informed that after careful review, the ADRB determined he was properly and equitably discharged. Accordingly, his request was denied.

23. On 17 February 2023, a member of the Case Management Division, Army Review Boards Agency (ARBA) staff requested the applicant provide documentation in support of his PTSD and other medical conditions. To date, he has not responded.

24. On 1 March 2023, the Department of the Army, Criminal Investigation Division, Crime Records Center conducted a search of the Army criminal file indexes, which revealed no records pertaining to the applicant.

25. The applicant provides the following documents that are available in their entirety for the Board's consideration.

a. A letter from a Public Defender at the Office of the Public Defender, City of Alexandria, Alexandria, VA, dated 17 February 1995, wherein the applicant was informed that their office could not reopen his case from 1987 because his trial attorneys were never employed by their office.

b. A letter from the Medical Records Department of INOVA Alexandria Hospital, Alexandria, VA, dated 14 July 2020, wherein the applicant was informed that the blood type of [REDACTED] was B-Negative.

c. Four pages extracted from what appears to be a court transcript that shows a discussion about the blood types of the applicant and [REDACTED]. It stated that since the applicant and [REDACTED] were both blood type "O," his guilt or innocence could not be confirmed.

d. A letter from a doctor at [REDACTED] dated 18 March 2021, wherein the applicant is informed that since the Dr. is no longer at the Office of the Chief Medical Examiner, he has no investigatory authority with regard to his case. He acknowledged receiving a page of a court transcript and the INOVA medical record form showing Ms. [REDACTED] blood type as B-Negative but advised the applicant that although he was unfamiliar with the particulars of his case, it definitely calls into question the validity of other findings.

26. The available record is void of evidence and the applicant has not provided evidence showing he was diagnosed with PTSD or that he was the victim of racism, false imprisonment, physical and emotional abuse, home invasion, reprisal, and two attempted sexual assaults by other prisoners during his period of service. The record is also void of any evidence showing the applicant was promoted following his reduction to PV1 on 23 August 1985.

27. Army Regulation 635-200 states a Chapter 10 discharge is a voluntary request for discharge in-lieu of trial by court-martial. In doing so, the applicant would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

28. By regulation, The ABCMR is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

29. Based on the applicant's petition referring to PTSD; the ARBA medical staff provided a medical review for the Board members. See the "MEDICAL REVIEW" section below. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published guidance on equity, injustice, or clemency.

30. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge, restoration of his rank, and correction of his duty status. He contends he had a PTSD, experienced military sexual trauma (MST), and racial discrimination that mitigated his misconduct.

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: 1) The applicant enlisted in the Regular Army on 17 August 1981; 2) A State of North Carolina Release Order shows the applicant was released on bond on 14 March 1985 and ordered to appear before the Cumberland County District Court on 3 April 1985 for charges of Trespassing and Assault on a female, and the applicant's duty status was changed from PDY to CMA on 28 March 1985 for pre-trial confinement; 3) On 17 April 1985, he escaped from pre-trial confinement and his duty status was changed from CMA to AWOL; 4) On 24 April 1985, the applicant's first sergeant went to his off-post residence to inventory and secure his military clothing and equipment; 5) The applicant was apprehended by military authorities on 2 July 1985, and the State of North Carolina Release Order shows the applicant was released on bond on 26 July 1985 and ordered to appear before the Cumberland County District Court on 12 August 1985 for charges of Communicating Threats and Telephonic Harassment; 6) Court-martial charges were preferred against the applicant on 26 July 1985 for the following violations: dereliction of duties, leaving place of duty, willfully disobeying a command twice, escaping confinement, and being AWOL from 8 April-2 July 1985; 7) On 9 September 1985 he was discharged, Chapter 10, for the good of the service - in Lieu of Trial by Court-Martial with a character of service of under other than honorable conditions.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional hardcopy military or civilian treatment records were provided for review.

d. The applicant asserts he experienced MST, PTSD, and racial discrimination while on active service which mitigates his misconduct. There is insufficient evidence the applicant reported any behavioral health symptoms while on active service, and there is insufficient evidence beyond self-report he experienced MST or racial discrimination. A review of JLV was void of medical documentation, and he does not receive any service-connected disability. He also did not provide any documentation that he has been diagnosed with any mental health condition, including PTSD.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing MST, racial discrimination, and PTSD symptoms that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing MST, racial discrimination, and PTSD symptoms that contributed to his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence beyond self-report the applicant was experiencing MST, racial discrimination, and PTSD symptoms while on active service. The applicant was facing civilian charges for violent assault, trespassing, and threats, and he was placed in pretrial confinement, which he escaped. It appears the majority of the applicant's military misconduct was in response to his civilian charges. Also, there is no nexus between his report of experience of MST, racial discrimination, and PTSD symptoms and his civilian charges. However, the applicant contends an experience and mental health condition resulted in his misconduct, and per the Liberal Consideration Policy, his contention is sufficient for consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board determined that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct and the reason for separation. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct and weigh in favor of a clemency determination. Based on a preponderance of evidence available for review, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. The Board further determined the evidence presented insufficient to warrant a relief for the portions of the requested relief pertaining to restoration of his rank/pay, grade of specialist four/E-4 (SP4), correction of his duty status to reflect false imprisonment rather than absent without leave (AWOL) and acknowledgement and compensation for his post-traumatic stress disorder (PTSD) and other mental and physical disabilities

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

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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.

ADMINISTRATIVE NOTE(S)

1. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "CONTINUOUS HONORABLE SERVICE FROM (first day of service for which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistment as prescribed above.

2. The evidence of record confirms the applicant enlisted on 17 August 1981, was awarded the Army Good Conduct Medal, and had an immediate reenlistment for the period of 3 August 1984 until 9 September 1985.
3. Based on the foregoing, amend the applicant's DD Form 214, ending 9 September 1985 by adding the following comment to item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 17 AUGUST 1981 TO 2 AUGUST 1984."

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 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 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 the evidence. It is not an investigative body.
4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
 - 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "KFS" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, by reason of In Lieu of Trial by Court-Martial.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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.

7. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; 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.

8. 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//