

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230002855

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his already-upgraded general under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- 23-page Complaint filed with the U.S. District Court, Middle District of Florida, Orlando Division

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180007621 on 8 June 2021. The applicant was granted clemency, which resulted in his characterization of service being upgraded to General, Under Honorable Conditions.

2. The applicant did not provide new evidence in support of his request. However, he provides a 23-page complaint filed with the U.S. District Court, Middle District of Florida, Orlando Division, Case No: [REDACTED], which states the decision made on ABCMR Docket Number AR20180007621 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law when they rendered a final decision. Further stating, in effect, the following regarding the "Facts" section of the previously stated ABCMR docket number:

a. Paragraph 5a, he joined the U.S. Army Reserve for six years as a reservist and was sent to Fort Gordon for Active Duty for Training (ADT) until 30 June 1979. He reenlisted for four years on active duty, volunteered for an assignment to the Southern European Task Force (SETAF) in Vicenza for two years, and voluntarily extended his tour for an additional year. From July 1982 until 30 July 1983, he was assigned to Fort Knox, KY was honorably discharged. From August 1983 until March 1984, he was attending monthly drills with the 309th Medical Group in Rockville, MD. He reenlisted on 27 March 1984 for the Special Forces option.

b. Paragraph 5b, the ABCMR omitted the fact that in January 1985, he volunteered for and successfully completed the Air Assault Training at Fort Rucker, AL and that, between 25 February to 14 March 1985, he volunteered for and successfully completed Recondo School. In March of 1985, he volunteered for Delta Force, but did not qualify. In April of 1985, he volunteered for a one-year hardship tour in Greece. A few short months later, he got married and shortly after received Permanent Change of Station (PCS) orders to Greece. In July of 1985, he was on temporary duty (TDY) to Fort Gordon where he successfully completed the V9 Satellite Operators Course, a mandatory requirement to operate the AN/MSC-64, Satellite Communications between his immediate headquarters (SETAF) in Vicenza, his higher headquarters in Germany, , and the Joint Chiefs of Staff (JCS) in the Pentagon.

c. Paragraph 5d, Colonel (COL) P., Department of the Army, Office of the Inspector General (DAIG), verified the violations in Greece prior to him going absent without leave (AWOL). His Official Military Personnel File (OMPF) contains a letter, dated 27 January 1994, from the DAIG, Lieutenant General (LTG) R.G., who denied his request for the IG Report after their 1986 final inspection of the 70th USAFAD in Yanitsa, Greece. "The Army IG has no records as the Board describes. Under current law, a no records response can be interpreted as a denial; in the OMPF there are two more follow-up Office of the IG exhibits/letters, dated 24 February 1994 and 24 March 1994, from the DAIG in reference to their final report after their inspection of the 70th USAFAD in Yanitsa, Greece in 1986. He went to Captain (CPT) E's office to report Top Secret SCI security violations of two-man control, which could seriously jeopardize national security. CPT E read them one by one, and became furious, and threw them on the floor and told him to pick them up and to get the f—k out of his office. CPT E retaliated by calling a hasty impromptu meeting with all the applicant's subordinate Soldiers and told them to write derogatory statements against the applicant. The SGT (sergeant) whom the applicant reported to the commander extended an invitation to have a drink at the small bar and then slid a shot of something over to the applicant, telling him to drink it. Once the applicant left the bar, he started screaming, hollering, and cursed out the commander, and the next thing he remembered was when he woke up, he was still on the detachment laying on his back on a small four-foot-long by ten-inch-wide bench with his legs and feet dangling, uncontrollably vomiting, and choking, with his entire body covered in layers of vomit. He had never been that sick in his entire life; there is a confidential incident report from the IG about what happened at the bar on the 70th USAFAD filed by military investigators that was placed in his OMPF. On 3 April 1986, he went AWOL from his unit in Greece to the United States to report security violations.

d. Paragraph 5d, at 09:50 a.m. on 7 April 1986, he turned himself into the military police (MPs) at Fort Belvoir, VA, still sick, having not slept much for the last three days, and suffering from jet lag and was not provided with an attorney after requesting one in writing at 10:20 a.m. On 7 April 1986, he was interrogated for 9 hours without an attorney present before making a Sworn Statement at 7:05 p.m. His OMPF contains a

copy of a DA Form 3861, dated 7 April 1986, which reflects he checked the box in the Non-Waiver Section on the front-side showing where he did not want to give up his rights, he wanted a lawyer, signing it at the bottom. In his OMPF is a copy of another DA Form 2823, signed by him on 7 April 1986 at 7:05 p.m. at Fort Belvoir, which indicated that he wanted to renounce his U.S. Citizenship after signing the DA Form 3861, signed earlier that day. In his OMPF is a copy of another DA Form 2823, a Sworn Statement made by Sergeant First Class (SFC) L.G.H., the Military Police Investigator (MPI), dated 18 April 1986, states, "on 8 April 1986, after [the applicant] was informed by me that he had to return to Greece... At his request, he was transported to Staff Judge Advocate (SJA) where he obtained legal counsel. The applicant was then released to A Company, 3rd Battalion, the transient company, pending disposition. He was released to A Company, 3rd Battalion each day he was here."

e. Paragraph 7b, his OMPF contains a copy of an DA Form 2823, signed by him on 7 April 1986 at 7:05 p.m., his desire to renounce his U.S. Citizenship after signing DA Form 3861 nine hours earlier that day. Further stating he did not want to answer any questions, he did not want to give up his rights, he wanted a lawyer present. The Sworn Statement typed up by the Military Police and signed by the applicant on 7 April 1986, stated, "After thorough thought I have come to the conclusion that I would like to renounce my American Citizenship. I do not want this to be taken negatively. I would never divulge any information about this country. I love this country and always will until I die. *This whole situation started in 1979 when I went to Italy in 1979 and stayed until 1982.* Being at a young and influential age (17) things were calm, nice and the people were very friendly. I could go anywhere in that country at anytime without having anybody bother me. Whereas in the area I live in here it is very dangerous to walk anywhere. One thing this is not in any way a political statement or in any way meant to reflect badly on the United States. *Upon arrival back to America in 1982 I felt it very hard to adapt to our customs again. Everything seemed so fast and the people uncaring. That is when I began to realize that Europe was more suitable for me.*" When he returned to the U.S. after serving three years in Vicenza, Italy, without returning to the U.S. on leave, he found it very hard to adapt to customs again. He was suffering from an adjustment disorder. Less than five years later, on 7 April 1986, he was a 25-year-old newlywed, with seven years in the military on a hardship tour in Northern Greece, without any disciplinary problems, who reported security violations to the commander, blacked out in the bar on the detachment, cursed out the commander outside, went AWOL to the U.S. and signed a Sworn Statement wanting to renounce his U.S. Citizenship.

f. Paragraph 5d, on 11 April 1986 at Fort Belvoir, VA, he had difficulty talking to his legal Counsel, Captain (CPT) B, because she did not have a security clearance. On 11 April 1986 at Fort Belvoir, CPT B withdrew from the applicant's case because she was unable to talk to him about the issues at hand because she didn't have the required security clearance. In a written letter from CPT B, dated 11 April 1986, routed thru the

Provost Marshall at Fort Belvoir, VA, the Office of the Staff Judge Advocate and to the Commander, United States Center and Fort Belvoir, Fort Belvoir, VA, CPT B wrote, "This is an additionally unusual case, since I am unable to speak with [the applicant], in that I do not have a clearance. CPT O, Senior Defense Counsel (SDC), Fort Belvoir, will be able to advise him as to his status when she returns on Monday, 14 April 1986. After my conversation with Military Intelligence (D.B.), I believe, for his sake, [the applicant] must speak with attorney who has clearance. I am unable to provide more information, as we had difficulty in exchanging information because he cannot speak to me about the issue at hand." The DA Form 2823 located in his OMPF, made by Sergeant First Class (SFC) L.G.H., the Military Police Investigator (MPI), dated 18 April 1986, states, "on 11 April 1986, "After his debriefing from MI, [the applicant] again requested to see his lawyer, when he was ordered by Lieutenant (1LT) D. to sign his Transportation Request and get on his flight arranged for him. CPT B requested that [the applicant] undergo a mental evaluation to be conducted on 14 April 1986." He never obtained legal counsel with a security clearance to discuss security issues at hand. On 18 April 1986 having never obtained legal counsel with a security clearance, he was ordered by a commissioned officer to return to Greece.

g. Paragraph 5e, court-martial charges were not preferred against him until 8 May 1986. The Charge Sheet, number 3 (Nature of Restraint of Accused) Restricted to PCF (Personnel Control Facility), number 9 (Date(s) Imposed) 19 April 1986; from 19 April thru 6 May 1986, He was a SGT attached to the PCF, awaiting reassignment orders from his parent unit and was restricted to the PCF at Fort Dix, NJ and was not allowed to wear his rank insignia or a name tag from 19 April thru 6 May 1986,

h. Paragraph 5f, he did not acknowledge that he did not want further rehabilitation or that he did not desire to perform further military service. He was attached to the PCF at Fort Dix, NJ, on 19 April 1986 pending reassignment Orders. His OMPF contain exhibits that show on 6 May 1986, he met with his defense counsel, CPT J.K.H., without a proper security clearance. He signed this "Request for Discharge For The Good Of The Service" without any charges being preferred against him. On 6 May 1986, underneath of his signature on this same "Request For Discharge For The Good Of The Service" exhibit is the signature of CPT J.K.H., his Defense Counsel. On this "Request For Discharge For The Good Of The Service" exhibit, the words, "I [applicant] hereby voluntarily request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. I understand that I may request discharge for the good of the service because of the following charge(s) which has (have) already been preferred against me under the UCMJ..." On 6 May 1986, after meeting with CPT J.K.H., he was not given 72 hours to consider the wisdom of submitting a request for discharge. On 8 May 1986, on the Charge Sheet, section III Section d, 8 May 1986, the signature of 1LT R.L.B., the commander of the PCF at Fort Dix, NJ, preferred charges against the applicant. Below the Referral is an Affidavit, dated 8 May 1986, with the signature of

CPT D.M., a Judge Advocate at Fort Dix, who witnessed charges being preferred against him. He was never provided or consulted with legal counsel.

i. Paragraph 5g, the separation authority, Major General (MG) T.W.K., Commander, at Fort Dix, NJ, did not review his records in accordance with AR 635-200, Chapter 10, for the good of the service, in lieu of court-martial. On 6 May 1986, when he met with his defense counsel, CPT J.K.H., there were no charges preferred against him until 8 May 1986. However, he signed the "Request for Discharge For The Good Of The Service" exhibit without any charges being preferred against him. Below his signature on this same "Request For Discharge For The Good Of The Service" is his defense counsel's signature. After his meeting with his Defense Counsel, he was not given 72 hours to consider the wisdom of submitting a request for discharge.

j. Paragraph 5h, the separation authority, Major General (MG) T.W.K., Commander, Fort Dix, New Jersey, did not review his records, in accordance with AR 635-200 Chapter 10, for the good of the service, in lieu of court-martial.

k. Paragraph 1, the ABCMR decision from 19 Jul 1989 is based on one period of AWOL and one failure to follow a lawful order. The ABCMR decisions made on 29 April 1998, 15 November 1999, 5 July 2007, and 10 May 2016 were based on two periods of AWOL and two failures to follow a lawful order.

l. Paragraph 4c, the Veterans Affairs (VA) Administrations Appeal decision, dated 9 February 1999, was based on the ABCMR Decision dated April 29, 1998, AC89-05813E, involving two periods of absences without leave and two refusals to obey lawful orders when there was only one AWOL and one refusal to obey an order.

m. Paragraph 7, he never received a copy of the Army Review Board Agency (ARBA) Medical Advisory Opinion after they reviewed his supporting documents and his military service records. Advisory opinions are obtained from other Army staff elements. If an advisory opinion is obtained, it will be referred to the applicant for comment before the application is further considered.

n. Paragraph 7a, from 30 June 1986 until his under other than honorable discharge in 1989, he did not work and had zero income. In 1990, his income was \$2,334.00; in 1991 and 1994, he had zero income; in 1992, his income was \$2,796.00; and in 1993, his income was \$4,255.00. He was denied Social Security Disability on 20 December 1993, 24 February 1994, and again from 2007 thru 2012. He was eventually approved in July 2012; and, started to receive Social Security Disability in 2013 until present.

o. Paragraph 7a, he was ineligible for medical/mental health treatment at the VA Hospital following his discharge on 30 June 1986. In 1993, the VA Regional Office in St. Petersburg, FL concluded that discharge was considered dishonorable for VA purposes;

thus, barring him from receiving medical or mental health treatment for his second period of service. On 17 January 1997, the Board of Veterans Appeals (BVA) denied his appeal regarding his under other than honorable discharge between 27 March 1984 and 30 June 1986, which was dishonorable for VA purposes. He was not allowed to seek medical/mental health care for his second period of service. His request for reconsideration was denied by the Board of Veterans Appeals on 23 July 1997. His subsequent appeals on 5 February 1999 and 6 April 2001 were denied. The denials were based on Willful and Persistent Misconduct. He was ineligible for VA medical/mental health care for his second period of service until 8 June 2021, when his discharge from 30 June 1986 was upgraded by the ABCMR to General, Under Honorable Conditions.

4. A review of the applicant's service record shows:

a. A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was honorably released from active duty and transferred to the U.S. Army Reserve Control Group (Reinforcement) on 30 July 1983, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 4, expiration term of service. He served 4 years net active service this period; 3 months and 29 days of total prior active service; and, 1 month and 1 day total prior inactive service.

b. On 28 March 1984, he enlisted in the Regular Army for a term of three (3) years.

c. On 8 May 1986, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet), show she was charged with:

- one specification of, without authority, absenting himself from his unit from on or about 4 April 1986 until on or about 7 April 1986
- one specification of willfully disobeying a lawful command given by his superior commissioned officer on or about 18 April 1986

d. On 6 May 1986, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to her. Subsequent to receiving legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that:

- by requesting discharge, he was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of an undesirable discharge

- he acknowledged he understood that if his discharge request was accepted he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
- he was advised he could submit any statements he desired in his own behalf; he did not submit any statements

e. On 23 May 1986, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, chapter 10, for the good of the service, and directed that he be reduced to the lowest enlisted grade and discharged under other than honorable conditions.

f. His DD Form 214 shows he was discharged on 30 June 1986, under the provisions of AR 635-200, chapter 10, for the good of the service, and his service was characterized as under other than honorable conditions. He completed 2 years, 2 months, and 29 days of net active service this period. He had lost time from 3 April 1986 until 6 April 1986. The DD Form 214 also shows in:

- Items 4a (Grade, Rate or rank) and 4b (Pay Grade) show PV1/E-1
- Item 12h (Effective Date of Pay Grade) – 12 May 1986
- Item 26 (Separation Code) - KFS
- Item 27 (Reentry Code) – RE-3, 3B, 3C
- Item 28 (Narrative Reason for Separation) – For The Good of the Service -In Lieu of Court-Martial

5. On 28 April 1987, the Army Discharge Review Board denied the applicant's request for upgrade of his discharge.

6. On 13 January 2021, after reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined it could reach a fair and equitable decision in the case without a personal appearance by the applicant. The Board also determined partial relief was warranted. Based upon the misconduct involved, the available documentation and the findings and recommendation of the medical advisor, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

7. The applicant's original DD Form 214 was voided. He was issued a new DD Form 214 reflective of his general, under honorable conditions characterization of service.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant's previous consideration for relief dated 08 June 2021 is summarized in Docket Number AR20180007621. The applicant did not provide new evidence in support of his request; however, he provided a complaint filed with the U.S. District Court, Middle District of Florida Orlando Division, Case No: 6- Case No: [REDACTED], which states the decision made on ABCMR Docket Number AR20180007621 is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law when they rendered a final decision.' In essence, the applicant asserts that the misconduct that led to his discharge was in service of his actions as a whistleblower to report security violations while stationed in Greece. The applicant further asserts that he was not provided proper legal representation. Regarding this applicant's request for reconsideration, the scope of this advisory is limited to the applicant's documented BH history in relation to the reason for discharge as documented in his service records. 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 was honorably relieved from active duty and transferred to the U.S. Army Reserve Control Group (Reinforcement) on 30 July 1983, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 4, expiration term of service.
- He enlisted in the Regular Army on 28 March 1984.
- A charge sheet dated 08 May 1986 documented that court-martial charges were preferred against the applicant for one specification of going AWOL in April 1986 and one specification of willfully disobeying a lawful command given by his superior commissioned officer in April 1986. After consulting with legal, the applicant requested discharge under the provisions of AR 635-200, Chapter 10, for the good of the service and he was discharged on 30 June 1986. More specifically, the applicant was noted to have left his duty station in Greece to Ft. Belvoir which he said was to report security violations going on at his home duty station. While there, he refused to sign a pass or return to his home duty station.
- The previous Medical Advisory documented the applicant's post-discharge BH diagnoses through the VA as Major Depressive Disorder, Delusional Disorder (diagnosed in 2015), and Unspecified Depressive Disorder. The Advisor also noted the applicant had submitted a letter to renounce his US citizenship while in-service. The Advisor opined that the applicant's diagnosis of MDD was not a mitigating factor for the misconduct that led to his discharge. Furthermore, the provider noted that although there was insufficient evidence that the applicant was experiencing symptoms of Delusional Disorder in-service, he may have been having prodromal symptoms which may have contributed to his behavior. As such, the Advisor recommended consideration of an upgrade to General from a compassionate standpoint.



- On 08 June 2021, the ABCMR granted clemency, which resulted in the applicant's characterization of service being upgraded to General

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. The applicant's in-service medical records that were available via the Veterans Benefits Management System (VBMS) were reviewed. The applicant had numerous service and medical records available for review and the relevant data will be summarized below. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's available in-service medical records were reviewed. A Report of Medical Examination and Report of Medical History dated 10 July 1979 documented no BH-related concerns and psychiatric was marked as 'normal' on clinical evaluation. It was documented that the applicant was determined to be medically qualified with a note indicating 'Airborne Qualified.' A Mental Status Examination (MSE) dated 20 Jan 1983 documented he was psychiatrically cleared for participation in airborne training. The applicant was referred for a psychiatric evaluation by his Trial Defense Services (TDS) lawyer on 11 April 1986. It was documented that the lawyer submitted the request due to what was described as 'delusional behavior and thought processes' and that he was unable to respond to normal conversation. An in-service psychiatric evaluation dated 14 April 1986 that was available via VBMS documented that the applicant did not have a psychiatric disorder and was psychiatrically cleared for any administrative actions as deemed appropriate. It was further documented that the applicant had the capacity to understand the nature of his actions, the consequences thereof, and was able to participate in any administrative procedures as deemed appropriate. There were no other in-service BH records available for review.

d. The applicant's service records provided as part of his application were reviewed. Between 20 February 1980 and 10 May 1982, the applicant received several Letters of Appreciation and Commendation regarding his performance during various exercises as well as his nomination and performance(s) at the board(s) for the Soldier of the Quarter and Soldier of the Year. Several enlisted evaluation reports were available for review from August 1981 through March 1986, and it was noted that the applicant consistently received the highest rating (e.g., 5) all measured domains.

e. A review of JLV shows the applicant is 100% service-connected through the VA, 70% for Panic Disorder. The applicant underwent several BH Compensation and Pension (C&P) examinations through the VA: 09 February 2021, 12 April 2022, 20 March 2023, and 20 June 2023. At the time of his initial evaluation on 09 February 2021, the provider concluded that the applicant's claim for anxiety and depression 'were

less likely than not due to his military service.’ The provider further opined that the applicant’s clinically diagnosed condition of Delusional Disorder was not indicative of a psychotic disorder based on their review of available FBI records. It was noted that records were indicative of actual investigations that had occurred based on the applicant’s own behaviors and statements. Of note, it was later documented in the applicant’s treatment records on 08 March 2023 that he asserted the C&P provider created a false narrative from the FBI records using only select information. He was diagnosed with the following conditions at subsequent C&P evaluations: Schizophrenia Spectrum Disorder (12 April 2022); Major Depressive Disorder (MDD), with Anxious Distress, Recurrent, Moderate and Panic Disorder (20 March 2023); re-affirmed MDD with Anxious Distress, Recurrent, Moderate to Severe and Panic Disorder (20 June 2023). A Department of Veteran’s Affairs Rating Decision Letter dated 27 November 2023 documented that the applicant was granted service connection for Panic Disorder to include MDD with Anxious Distress which was noted to be secondary to one of his service-connected disabilities for physical health reasons. Review of the VA Disability Rating Letters and JLV shows he has not been granted service-connection for any other BH conditions.

f. Regarding his BH treatment history, a review of JLV shows the applicant initiated BH services through the VA on 14 August 2013 for depression. He completed his initial intake on 20 August 2013 and had a follow-up appointment on 28 August 2013 wherein he declined psychotherapy and medication treatment at that time and was discharged back to primary care. The provider diagnosed with applicant with Major Depressive Disorder, Recurrent, Severe, with Psychotic Features. The applicant re-engaged with BH on 27 August 2015 and records show that he continued to engage with BH on-and-off, typically on a monthly basis, though sometimes less frequently and at times suspended care for a few months, with his last BH note dated 10 April 2024. It was noted in an intake note dated 10 September 2015 that the applicant endorsed a history of sexual harassment from other service men while in the military. No further information was provided and there was no indication that this was a focus of treatment nor that this was related to the circumstances that led to his discharge. In a psychotherapy note dated 24 January 2019, it was also documented that the applicant reported that he had been propositioned by commanding officers on three occasions during his time in service. The provider noted that further assessment needed to be conducted to determine whether this report met the criteria for military sexual trauma (MST); however, there is no indication that further evaluation occurred. His VA records show he has been diagnosed with various BH conditions since initiating treatment in 2013 to include Unspecified Depressive Disorder, Unspecified Psychotic Disorder, Delusional Disorder, Unspecified Anxiety Disorder, Delusional Disorder-Persecutory Type, Anxiety Disorder, Alcohol Use Disorder, Moderate, in Full Sustained Remission (15-25 years), Tobacco Use Disorder, Mild, in Full Sustained Remission, and Generalized Anxiety Disorder. The applicant consistently refused medication management through the VA for psychiatric reasons, and it was documented in a note in 2017 that he was prescribed

Lexapro and Clonazepam through his non-VA primary care provider. Review of his treatment records show that the focus of his concerns and treatment revolved around the circumstances that led to his discharge (e.g., acting as a whistleblower to report security violations), post-discharge FBI investigations for espionage and terrorism, as well as difficulty getting his records upgraded since his discharge. A BH note dated 15 January 2020 opined that the applicant's report of his history indicates that he had a possible psychotic break in the military. He frequently noted experiencing depression and anxiety regarding his treatment by the military and his discharge and reported he was homeless for 5 years following his discharge from the military. A note dated 22 June 2022 documented the applicant was trying to get a previous diagnosis of Delusional Disorder removed from his records.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a condition or event in-service that contributed to the misconduct that led to his discharge. In-service records were void of any BH diagnosis or treatment history. Post-discharge records demonstrate he has been treated through the VA since 2013 and has since been 70% service-connected for Panic Disorder and MDD secondary to service-connected physical health problems. He has also been diagnosed with various BH conditions through the VA throughout his course of treatment from 2013-2024 to include anxiety disorder, depressive disorders, and Delusional Disorder. As his service-connected BH conditions are secondary to service-connected physical health problems, and the absence of in-service records indicating he met criteria for a BH condition, there is insufficient evidence to support mitigation for BH reasons.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected for Panic Disorder and Major Depressive Disorder with Anxious Distress, Recurrent, Moderate.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected for Panic Disorder and Major Depressive Disorder with Anxious Distress, Recurrent, Moderate.

(3) Does the condition or experience actually excuse or mitigate the discharge? There is some support for mitigation based on the applicant's post-discharge BH diagnoses. The applicant's in-service records are void of any BH diagnosis or treatment history. An in-service psychiatric evaluation documented that the applicant did not have a psychiatric condition and was psychiatrically cleared for administrative actions. Since his discharge, the applicant has engaged in BH treatment through the VA since 2013 and is 70% service-connected for Panic Disorder and Major Depressive Disorder with Anxious Distress, Recurrent, Moderate secondary to service-connected physical health

concerns. There is documentation in the record indicating that the applicant reported he experienced sexual harassment from other service members while in the military. Additional details were not provided, this was not a focus of his treatment, and the applicant did not assert that the misconduct that led to his discharge was related to MST. Although the applicant has been diagnosed and treated for Delusional Disorder through the VA, he is not service-connected for this condition. Moreover, the C&P medical opinion dated 01 August 2022 documented that the claimed condition (re: Schizophrenia Spectrum Disorder) was 'less likely than not incurred in or caused by the claimed in-service injury, event, or illness.' As there is an association between avoidance behaviors and anxiety, there is a nexus between the applicant's misconduct of AWOL and his service-connected condition(s) of MDD with Anxious Distress and Panic Disorder and his experience of MST. As such, some of the behavior that led to his discharge is mitigated by his BH conditions.

i. As documented in the previous Advisory, while there is no evidence that the applicant was experiencing symptoms consistent with Delusional Disorder at the time of discharge, it is possible he was exhibiting prodromal symptoms (i.e., symptoms prior to a psychotic break). Moreover, given the longstanding nature of his depression, anxiety and post-discharge psychotic symptoms which are related to the matters surrounding his discharge, consistent with the previous recommendation, there is BH support for a compassionate upgrade.

#### BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant was charged with commission of an offense (AWOL and disobeying an order) punishable under the UCMJ with a punitive discharge. After being charged, she consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board also noted that the applicant later petitioned the ABCMR for an upgrade of his discharge, and although the decision was not unanimous, the former Board granted him partial relief in the form of an upgrade of his discharge to a general discharge.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct. Also, the

applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the upgraded character of service the applicant received upon separation was not in error or unjust.

c. The Board further noted that per 10 USC section 1556, an applicant seeking corrective action by the ARBA must 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 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.

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 to amend the decision of the ABCMR set forth in Docket Number AR20180007621 on 8 June 2021.

■

■ ■

---

■

■

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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service 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.

2. 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.

3. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

4. 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. 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. 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.

5. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//