

IN THE CASE OF: ██████████

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230004749

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under honorable conditions (general) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20140003723 on 4 November 2014.
2. The applicant states he had to retire from his job with the U.S. Post Office due to his history of post-traumatic stress disorder (PTSD) and permanent disability, which is a direct result of his time in the Army. He requests the board grant him relief so he can receive the full veterans' benefits he is due.
3. The applicant enlisted in the Regular Army on 11 February 1981. The highest rank/grade he held was specialist/E-4.
4. On 9 June 1983, he accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for, on or about 1 June 1983, failure to be at his appointed place of duty at the time prescribed. His punishment was reduction to private first class/E-3 (suspended for 120 days) and forfeiture of \$174.00 pay.
5. On 15 August 1983, he accepted NJP under Article 15, of the UCMJ, for being derelict in the performance of his duties, on or about 3 August 1983; and on or about 4 August 1983, failure to be at his appointed place of duty at the time prescribed. His punishment was reduction to private/E-2, forfeiture of \$150.00 pay (suspended for 90 days), extra duty and restriction for 14 days.

6. On 31 August 1983, he accepted NJP under Article 15, of the UCMJ, for one charge and two specifications for on or about 20 August 1983, failure to obey a lawful order from his superior commissioned officer. His punishment was reduction to Private/E-1 (PV1); forfeiture of \$200.00 pay per month for two months suspended for two months; extra duty and restriction for 30 days.

7. On 7 December 1983, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 13, for unsatisfactory performance.

8. On 8 December 1983:

a. The applicant declined the opportunity to consult with counsel when filling out his election of rights statement.

(1) He was advised of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights.

(2) He understood the least favorable discharge he could have received and the effects of each type of discharge/characterization of service.

(3) He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized that an act of consideration by either board does not imply that his discharge would be upgraded.

(4) He waived consideration of his case by and personal appearance before a board of officers and senior noncommissioned officers.

(5) He elected to submit a statement on his own behalf, stating he understood he was being put out of the Army under chapter 13. However, he would rather finish out the 65 days he has left on his tour of service than accept a chapter 13.

b. His immediate commander formally recommended his separation from the service, under the provisions of AR 635-200, paragraph 13. In his recommendation he highlighted eight counseling's the applicant received from commissioned and senior noncommissioned officers from 1 March 1983 to 4 November 1988. He noted, the applicant demonstrated an inability to "stick with" any task or duty. Although he was capable of an initial good impression, he was incapable of any sustained performance efforts and doubted the applicant could perform duties without close and continuous supervision from all levels of his chain of command.

9. On 13 December 1983, the separation authority approved the chain of command's recommendation and directed the applicant be issued a General Discharge Certificate.

10. On 23 December 1983, the applicant was discharged under the provisions of AR 635-200, Chapter 13, for unsatisfactory performance, with an under honorable conditions (general) characterization of service in the grade of E-1. He received a separation code of "JHJ" and reenlistment code of "3." His DD Form 214 also shows he completed 2 years, 10 months, and 13 days of net active service with 1 year, 5 months, and 29 days of foreign service during the covered period.

11. The ABCMR considered the applicant's request for upgrade of his general discharge on 4 November 2014. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

12. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsatisfactory performance under the provisions of AR 635, chapter 13 would be characterized as honorable or under honorable conditions.

13. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous requests for an upgrade of his under honorable conditions (general) characterization of service. The applicant asserts that PTSD is related to his request for upgrade.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- He enlisted in the Regular Army on 11 February 1981.
- On 9 June 1983, he accepted non-judicial punishment (NJP) for on or about 1 June 1983, failure to be at his appointed place of duty at the time prescribed.
- On 15 August 1983, he accepted NJP for being derelict in the performance of his duties, on or about 3 August 1983; and on or about 4 August 1983, failure to be at his appointed place of duty at the time prescribed.
- On 31 August 1983, he accepted NJP for one charge and two specifications for on or about 20 August 1983, failure to obey a lawful order from his superior commissioned officer.

- His immediate commander formally recommended his separation from the service, under AR 635-200, paragraph 13, for unsatisfactory performance. In his recommendation he highlighted eight counseling's the applicant received from commissioned and senior noncommissioned officers from 1 March 1983 to 4 November 1988. He noted, the applicant demonstrated an inability to "stick with" any task or duty. Although he was capable of an initial good impression, he was incapable of any sustained performance efforts and doubted the applicant could perform duties without close and continuous supervision from all levels of his chain of command.
- The applicant was discharged on 23 December 1983 under AR 635-200, Chapter 13, with an under honorable conditions (general) characterization of service.
- ABCMR denied his request for relief on 4 November 2014.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), his DD Form 214, his service and separation records, as well as a self-authored statement. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts PTSD is a mitigating factor in his discharge. More specifically, he asserts that PTSD is a direct result of his time in the service, though gives no further explanation in his application or supporting documents. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting documents did not contain his service treatment records (STR). His recommendation of elimination memorandum states that a separation mental status exam and physical were completed and submitted however copies were not available for review in his record. No other records were provided to substantiate his claim. There is no evidence of any mental health conditions nor concerns during his time in service. In addition, the applicant has no combat deployment history, nor any other record of a traumatic event or events occurring during his time in service.

e. Per the applicant's VA EHR, he is 90% service connected, to include 70% for PTSD. The applicant has been engaged in mental health care at the VA since at least 2004 (ERH notes go back to 2004 but encounters cite mental health care as far back as 1996). He has been diagnosed with psychosis – not otherwise specified (NOS), insomnia, intermittent explosive disorder, impulse control disorder, PTSD, cannabis dependence, and acute reaction to stress. One inpatient discharge summary from 3 June 2014 notes that he's had long standing PTSD and impulse control disorder since

1996. During this same stay he also reported numerous traumatic events during training and service, primarily accidents (seeing a drill sergeant take a grenade from a soldier scared of releasing a grenade and blew up; weapons being loaded into a supply truck, one left loaded and a friend accidentally shot right next to him). His C&P was not available for review. He has engaged in individual and group therapy, substance use care, case management, medication management, inpatient and residential treatment.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that while there is insufficient evidence to support the applicant had any mental health conditions during his time in service, though he has since been service connected for PTSD. That said, only a portion of his misconduct would be mitigated.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, applicant asserts PTSD is related to his request for upgrade.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts PTSD from his time in the service and is 70% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant asserts he suffers from PTSD because of his time in service. There is insufficient evidence the applicant was experiencing any mental health conditions during his time in the Army, nor is there contemporaneous documentation that a traumatic event or events occurred. However, the applicant has since been service connected for PTSD. Avoidance behaviors can manifest as failure to reports, which is consistent with natural history and sequelae of PTSD. There is a nexus between depression and a portion of the misconduct cited in his separation documentation. Failure to obey direct orders are not typically mitigated, however the orders he did not follow primarily revolved (again) around not reporting when he was ordered to (not showing up for extra duty and not checking in hourly to the CQ desk). Hence, there is a likely nexus between this behavior and his asserted PTSD. However, there is not a nexus between being derelict in his duties (retaining arms room keys). Other behaviors for which he was counseled and likely contributed to his separation, such as making unauthorized phone calls and having a female in the barracks, also would not be mitigated. Hence, mitigation is only partially supported.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being only partially mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20140003723 on 4 November 2014.

2/15/2024

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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 (USC), Section 1556, 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.
2. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The Veterans Administration (VA) does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and

performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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

c. Chapter 13 provided for separation due to unsatisfactory performance when in the commander's judgment the individual would not become a satisfactory Soldier; retention would have an adverse impact on military discipline, good order and morale; the service member would be a disruptive influence in the future; the basis for separation would continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, was unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation would be characterized as honorable or under honorable conditions.

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/NR) 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 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.

//NOTHING FOLLOWS//