

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230004770

APPLICANT REQUESTS: removal of Article 15.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Installation Clearance Record
- Memorandum, subject: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (PTSD), 3 September 2014
- Jacksonville Medical Care Letter, 28 June 2016
- Primary Care Behavioral Health (BH) Plan
- Department of Veterans Affairs (VA) Administrative Decision
- Medical Record Report

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 he requests the Article 15 for being absent without leave (AWOL) during the dates of 30 July 1992 to 24 August 1992 be removed, because this was due to PTSD after serving in Desert Storm.
 - a. He was never offered help even after he asked for help from his chain of command. Since the chain of command would not give him the help, he requested there is nothing in his military records while he was enlisted that would show he was suffering from PTSD. After suffering with this for so many years he went to his family doctor and was diagnosed with PTSD.

b. He was told by his local VA office that he could request a copy of the administrative decision from his VA facility and notice that the information listed is incorrect.

c. In his self-authored statement, he is requesting his case be reviewed and receive special and liberal consideration by the board. Do to the fact that his misconduct was due to undiagnosed PTSD. He described his childhood upbringing.

d. He described liking his job and the people he worked with. He recalls the alert call prior to deploying to Operation Desert Shield/Storm. He deployed to Southwest Asia on 4 December 1990 through 28 April 1991. The time he was there he experienced a lot. It was close to living like an animal he did not get showers on a regular basis. When he first got out there, nobody got a shower in about in a month. He was told their mission was to attack, attack until the fight was over. He realized he had to fight to stay alive. He found out that he was exposed to dangerous plumes of nerve gas and other chemical agents. After the war was over death was all around him dead body parts everywhere. It just stunk horribly, and that was a horrible memory. He had to clean up, pick up explosives and pick up if there was dead inside the tanks, scrape them out and leave them for engineers.

e. After returning from war, he was sent back to Germany. He took a 45-day leave to spend with his wife. After their vacation she told him that she was pregnant. He was very proud of being a father and a husband. His wife later started having complications during her pregnancy she delivered their daughter at 5 months. During that time of delivery his daughter weighed less than a pound and had a lot of medical complications. His child was born in Bamberg, Germany. She only lived for 6 weeks. He then had to take a Blue Bark to go bury his child back in his hometown of Arkansas. To experience the death of his daughter reminded him of the death he had just experienced in Desert Storm.

f. He was then reassigned to Fort Hood, Texas. He could not adjust back to living a normal life. Having nightmares, flashbacks of the event that left him feeling like it is happening all over again. He was feeling emotionally cut off from others, difficulty concentrating on his job and sleeping, aches and pain. He saw himself starting to use alcohol and drugs to deal with the things he saw and experienced. He would lay in bed at night and still smell dead flesh. He tried to get help in Fort Hood for his alcohol and drugs. His sergeant and first sergeant did not support him in a time of need. He took it upon himself to try to find some help for his problems. He tried to reach out the best way he knew how. He signed up for counseling/therapist on his own it was difficult to even discuss the circumstances of what happened because it brings back bad memories. He signed up to serve his country and never would have imagined being discharged and leaving the service with a black permanent mark on his record.

3. The applicant enlisted in the Regular Army and entered active duty on 24 February 1989.

4. He served in:

- Germany from 23 July 1989 to 3 December 1990
- Saudi Arabia from 4 December 1990 to 28 April 1991
- Germany from 29 April 1991 to 17 February 1992

5. On 27 August 1992, court-martial charges were preferred against the applicant for violating Article 86 of the Uniform Code of Military Justice (UCMJ) for being AWOL from 30 July 1992 and did remain so absent until he was apprehended on or about 24 August 1992.

6. On 1 September 1992, additional court-martial charges were preferred against him for violating Article 112a of the UCMJ by wrongfully using cocaine on or about 2 June 1992.

7. On 3 September 1992, after consulting with counsel, the applicant submitted a request for discharge for the good of the service in lieu of trial by court-martial in accordance with Chapter 10 of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel). In his request he stated that he understood:

- He may be discharged under other than honorable conditions
- He understood the prejudice he may be subjected to as a result of such a discharge
- He would be deprived of many or all benefits and that he was not subjected to coercion by anyone to submit such a request
- He also elected not to submit a statement in his own behalf

8. On 2 September 1992, his chain of command recommended approval of the discharge request.

9. On 4 September 1992, consistent with the chain of command recommendation and following a legal review for legal sufficiency, the separation authority approved his request for discharge and directed that he be discharged under other than honorable conditions and reduced to the lowest enlisted grade.

10. Accordingly, the applicant was discharged under other than honorable conditions on 11 September 1992, under the provisions of AR 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 5 months, and 24 days of active service. His DD Form 214 also shows:

- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): 3
- Item 29 (Dates of Time Lost During This Period): 30 July 1992 – 23 August 1992

11. On 9 December 1996, the Army Discharge Review Board (ADRB), after careful consideration of his military records and all other available evidence, has determined that he was properly and equitably discharged. The ADRB denied his petition to upgrade his discharge.

12. On 1 June 2006, the ABCMR, reviewed case AR20050017057, applicant's request for upgrade of his character of service. The ABCMR determined that the evidence presented did not demonstrate the existence of a probable error or injustice and denied his request.

13. On 30 June 2016, the ABCMR, reviewed case AR20150001663, applicant's request for reconsideration to upgrade his character of service. The ABCMR determined that the evidence presented did not demonstrate the existence of a probable error or injustice and denied his request.

14. The applicant provides:

- a. Installation Clearance Record showing his authority for departure as Blue Bark.
- b. Memorandum on supplemental guidance to military boards considering discharge upgrade requests by Veterans claiming PTSD.
- c. Jacksonville Medical Care Letter, 28 June 2016, stating in part the applicant has been treated for symptoms of PTSD, Chronic neck and low back pain.
- d. Primary Care Behavioral Health (BH) document related to the applicant's medication for sleep and next appointment date and time.
- e. VA Administrative decision stating the veteran's discharge for the period of service from 24 February 1989 to 11 September 1992 was issued under dishonorable conditions under the provisions of CFR 3.12 (d) (4). The veteran is entitled to health care and related benefits under Chapter 17, Title 38 U. S.C. for any disabilities determined to be service connected.
- f. Medical Record Report which is illegible.

15. There is no evidence within the applicant's available records that shows he received an Article 15 under the UCMJ. There were only court-martial charges that were preferred for his AWOL time.

16. By regulation, AR 600-8-104 (Army Military Human Resource Records (AMHRR) Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR or the Official Military Personnel File (OMPF), which is reflective of a Soldier's permanent record stored in the Interactive Personnel Electronic Records Management System (iPERMS).

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting removal of the Article 15 he received for being absent without leave (AWOL) during the dates of 30 July 1992 to 24 August 1992. He contends he experienced PTSD that mitigates his misconduct. The applicant's self-statement asserts that the death of his daughter following his return from Desert Shield/Storm re-triggered memories of the death he was exposed to during Desert Storm and that he had difficulty adjusting to 'normal life' upon his return. 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 (RA) on 24 February 1989 as a 31K, combat signaler, 2) the applicant was deployed to Saudi Arabia in support of Operation Desert Shield/Storm from 04 December 1990 to 28 April 1991, 3) he was reported AWOL on 30 July 1992 and returned to military control on 24 August 1992, 4) on 27 August 1992 court-martial charges were preferred against him for being AWOL, 5) on 01 September 1992 additional court-martial charges were preferred against him for use of cocaine on 02 June 1992, 6) the applicant was discharged on 11 September 1992 under other than honorable conditions (UOTHC) under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial, 7) the applicant previously petitioned the Army Discharge Review Board (ARDB) on 09 December 1996 and the ARDB denied his petition to upgrade his discharge, 8) the applicant previously petitioned the ABCMR twice before on 01 June 2006 AR20050017057 and 30 June 2016 AR20150001663 to which the board denied the applicant's request for relief.

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. Minimal documentation was provided from the applicant's military medical service treatment 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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant provided a copy of a medical record from Darnall Army Community Hospital signed on 22 June 1992, though the document is largely illegible. It appears the applicant underwent treatment in June 1992 for cocaine detoxification and was diagnosed with cocaine abuse, in remission. No other in-service BH records were available for review. The previous BH medical opine completed as part of his 30 June

2016 AR20150001663 petition did not support relief as it was documented there was no evidence available at the time to support the applicant's assertion of PTSD.

d. VA records are available in JLV for review from 04 August 2009 to 28 June 2024. The applicant is not service-connected through the VA for any BH conditions. Per review of JLV, the applicant was evaluated by a psychologist on 20 September 2021 through primary care mental health. It was documented that the applicant endorsed trauma-related anxiety and polysubstance use. The provider noted that the applicant described his Criterion A event as occurring during the Gulf War when he witnessed mass graves, specifically saw dead bodies and body parts partially buried or coming out of body bags. It was documented that the applicant endorsed having 'weekly nightmares, intrusive memories, avoidance of internal trauma cues/external reminders, and feeling numb.' At the time of the visit the diagnostic impressions were noted as Alcohol Related Disorder, Unspecified, Cocaine Related Disorder, Unspecified, and Trauma/Stressor-Related Disorder, Unspecified. A substance abuse evaluation note dated 25 October 2021 documented that the applicant had been sober from cocaine for 1 year. A mental health note dated 20 December 2021 documented that the applicant's sleep had improved with a Trial of Trazodone and he was diagnosed with PTSD, Alcohol Use Disorder, In Remission, and Generalized Anxiety Disorder (GAD). He was started on Sertraline for PTSD symptoms at the time of that visit and later documented to also address symptoms of anxiety and depression. He was referred to outpatient mental health for a PTSD assessment and treatment options on 27 October 2022; however, the referral was canceled as the applicant was deemed ineligible for Outpatient Mental Health Services due to his UOTHC discharge. His mental health treatment through the VA was primarily addressed through primary care mental health.

e. The applicant provided a summary of care from Jacksonville Medical Care dated 28 June 2016. It is documented that the applicant was treated by a physician (specialty unknown) for symptoms of PTSD and chronic neck and low back pain. The provider noted he was prescribed Diclofenac, Cyclobenzaprine, and Tramadol. The documentation provided does not specify the onset of the specified conditions nor indicate association with the applicant's time in service.

f. The applicant is petitioning the board to remove his Article 15 that he received for being absent without leave (AWOL) during the dates of 30 July 1992 to 24 August 1992. He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates his misconduct. One record was available from the applicant's military service treatment record that was largely illegible though did indicate a diagnosis of cocaine abuse, in remission in June 1992. There are no other BH records available from the applicant's time in service. The applicant initiated BH treatment through the VA in 2021. He has been clinically diagnosed by the VA with Trauma/Stressor-Related Disorder, Unspecified and PTSD secondary to trauma exposure while deployed as part of Operation Desert Shield/Storm.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD at the time of his offense/discharge. Per liberal consideration guidelines, his assertion alone is worthy of consideration by the Board. The applicant's military service treatment record is void of any BH treatment or diagnoses aside from Cocaine Abuse, In Remission. He has been diagnosed with PTSD secondary to his experiences during Operation Desert Shield/Storm by a VA provider in 2021. There is no evidence in the record that the applicant had any misconduct prior to his deployment to Saudi Arabia. AWOL and substance use occurred after his service in Operation Desert Shield/Storm to which he reported exposure to death and dead bodies. Given that AWOL and self-medication with substances are avoidance behaviors associated with the natural history and sequelae of trauma-exposure/PTSD, there is a nexus between his symptoms/experiences and the AWOL and cocaine use leading to his discharge. As such, BH medical mitigation is supported.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board determined the applicant's record is void of nonjudicial punishment procedures under the Uniform Code of Military Justice; however, concluded by a preponderance of the evidence the applicant was effectively requesting the preferred charge of being absent without leave (AWOL) from 30 July 1992 to 24 August 1992 be removed from his records.

2. Through his own admission, the applicant asserts that his period of AWOL was due to post-traumatic stress disorder after serving in Operation Desert Shield/Desert Storm. The Board determined the applicant did not demonstrate by a preponderance of the evidence that procedural error occurred that was prejudicial to the applicant or that the contents of the court-martial charge was substantially incorrect.

3. Prior to closing the discussion, the Board reviewed the medical reviewer's opinion and supported evidence through the Department of Veterans Affairs that the applicant

has been diagnosed with PTSD secondary to trauma exposure while deployed and concluded as a matter of equity, his characterization of service should be upgraded from other than honorable conditions to under honorable conditions (General). Additionally, the Board determined the period of lost time annotated on his DD Form 214 should be removed.

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:

1. 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.

2. Prior to closing the discussion, the Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 11 September 1992 to show in:

- item 24 (Character of Service): under honorable conditions (General)
- item 29 (Dates of Time Lost During This Period): None

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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.

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 1 O 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 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. A discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a stated 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 stated 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.

3. AR 600-8-104 (Army Military Human Resource Records (AMHRR) Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR or the Official Military Personnel File (OMPF), which is reflective of a Soldier's permanent record stored in the Interactive Personnel Electronic Records Management System (iPERMS).

a. Appendix B-1 (AMHRR Required Documents) lists documents required for filing in the AMHRR and/or iPERMS.

b. Documents required for filing in the OMPF include those in the following folders: Performance, Service, Restricted, Flight, Medical, State/territory and in the AMHRR additional folders in iPERMS, which include the following primary folders: Department of the Army photograph, Combat-Related Special Compensation (CRSC)/Traumatic Servicemember's Group Life Insurance (TSGLI), Finance, Finance restricted, Deployment/mobilization, Administrative, Personnel records review, and Finance records review.

c. Within the OMPF Service Folder, the document named "APPRSEPS" with the document title, "Case Files for Approved Separations" is a required document for filing within the AMHRR/OMPF.

d. A document properly filed in the AMHRR is considered to be permanently filed and cannot be removed unless it meets the criteria in paragraph 3-7 of this regulation, wherein Soldiers and Human Resource Managers conduct an annual review of Soldiers' personnel and finance records using the record review tool in iPERMS to upload required documents and update entries on the record brief.

//NOTHING FOLLOWS//