

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230004896

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal statement
- Statement from his wife
- Department of Veterans Affairs (VA) documents
- 2019 private medical documents

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 AR20180011042 on 10 March 2020.

2. The applicant states he is requesting a discharge recategorization changed to honorable for the entirety of his service considering that a partial relief has been granted for his period of continuous honorable service from 19990710 to 20010627, which was granted in a prior review. His supporting evidence is a 30% VA disability rating for post-traumatic stress disorder (PTSD) diagnosis of 30%. His mental health was affected by incessant bullying, which included racial profiling, harassment, denial of mental health support during the service, leading to deterioration of mental health and an inability to make sound judgement. Not being given an opportunity to receive mental health support to prevent a deterioration has led to the actions which in turn led him to be chaptered out of the military.

3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health conditions as contributing and mitigating factors in the circumstances that resulted in his separation.

4. The applicant submits copies of VA rating determination and private medical records as new evidence.

5. A review of the applicant's service record shows he enlisted in the Regular Army on 10 June 1999 and completed training with the award of the military occupational specialty 63B (Light Wheel Mechanical). He reenlisted on 28 June 2001.

6. On 23 January 2002, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of stealing \$298 worth of clothes from the Army Air force Exchange on or about 15 October 2001.

7. On 30 January 2002, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA), and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He elected not to submit a statement on his own behalf.

8. On 11 February 2002, the separation authority approved the applicant's voluntary request for discharge in lieu of trial by court-martial and ordered the applicant discharged under the provisions of AR 635-200 ,Chapter 10, with a UOTHC; and reduced to the lowest enlisted grade.

9. He was discharged on 22 February 2002. His DD Form 214 shows he was discharged under other than honorable conditions in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He had completed 2 years, 8 months and 22 days of active service.

10. On 9 August 2010, the Army Discharge Review Board carefully considered his military records and all other available evidence but determined he was properly discharged, and he was denied relief.

11. On 10 March 2020, the ABCMR denied his request for an upgrade but corrected his DD Form 214 to show he had a period of honorable continuous active duty.

12. The applicant provided:

a. A copy of a VA disability rating showing a 30% evaluation for PTSD and a 10% evaluation for loss of sensation in finger due to injury.

b. A copy of private treatment records.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he 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.

14. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

MEDICAL REVIEW:

1. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

2. 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:

a. Applicant enlisted in the Regular Army on 10 June 1999 and reenlisted on 28 June 2001.

b. On 23 January 2002, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of stealing \$298 worth of clothes from the Army Air Force Exchange on or about 15 October 2001.

c. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations –

Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial.

d. Applicant was discharged on 22 February 2002. His DD Form 214 shows he was discharged under other than honorable conditions in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10 with separation code KFS, and a reentry code of 4.

f. On 9 August 2010, the Army Discharge Review Board considered his military records and all other available evidence but determined he was properly discharged, and he was denied relief.

g. On 10 March 2020, the ABCMR denied his request for an upgrade but corrected his DD Form 214 to show he had a period of honorable continuous active duty. Documentation from that Board indicates two Article 15's on 19 June 2001 for assault on PVT M by striking him repeatedly with a closed fist in the face and on 30 January 2001 for remission of punishment.

3. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, self-authored statement, statement from his wife, medical documents, VA documents, ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. 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.

4. The applicant states he is requesting a discharge recategorization changed to honorable for the entirety of his service considering that partial relief has been granted for his period of continuous honorable service which was granted in a prior review. His supporting evidence is a 30% VA disability rating for post-traumatic stress disorder (PTSD). He states his mental health was affected by incessant bullying, which included racial profiling, harassment, denial of mental health support during service, leading to deterioration of mental health and an inability to make sound judgement. Not being given an opportunity to receive mental health support to prevent a deterioration led to the actions which in turn led him to be chaptered out of the military. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health conditions as contributing factors in the circumstances that resulted in his separation.

5. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted a psychological evaluation, dated 30 May 2019,

consistent with the 10 March 2020 ABCMR denial of his request for an upgrade, he reported during this evaluation having received two Article 15's during military service. The applicant disclosed during his psychological evaluation having assaulted a romantic partner who was pregnant with their child. He described how he, "grabbed her by the shoulders and forcefully escorted her to the lobby." He shared being detained for four hours due to this incident. In addition, he reported a fellow soldier borrowed money from him and, reportedly, was not paying him back and also engaged in saying insulting things to the applicant. The applicant took a knife into the individual's room and "beat him up pretty bad." He was detained for 7-8 hours due to this incident. However, the charge that ultimately resulted in his discharge was petty larceny when he was caught stealing clothes. The diagnostic impression based on that evaluation was of Paranoid Personality Disorder and Generalized Anxiety Disorder. The psychologist noted the applicant having "considerable acting-out behaviors and difficulties that included substance abuse, history of criminal behavior, violent and abusive behaviors, and poor impulse control. He is likely to engage in various antisocial behaviors, tends to behave aggressively toward others, and may be viewed as being antagonistic, angry, and argumentative. He may engage in antisocial acts such as lying or cheating. He may engage in instrumentally aggressive behavior and is likely viewed by others as domineering."

6. Limited VA electronic medical record were available for review and the applicant is 100% service connected for PTSD. A C and P examination dated, 11 October 2022, diagnosed the applicant with PTSD. However, the reported stressor/traumatic events do not meet diagnostic criteria for PTSD and essentially lists criminal behaviors the applicant engaged in. The examiner stated the following as the traumatic events the applicant's PTSD diagnosis was based on, "he has been disrespected, harassed and arrested, has been talked down to by MPs for whom he was a mechanic. There were physical fights he suffered. He got Article 15s, got smacked by a woman who would be mother of his son, and he had to take her to CQ room, was mechanic for MPs who charged him with violations." "His brother-in-law passed away and someone criticized his brother-in-law and veteran beat him up. He had many run-ins... He went into the PX and stole clothes. He was thrown out of the Army."

7. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that the diagnostic criteria for PTSD does not appear to have been met. However, given his service connection the presumption of a behavioral health condition during military service will be accepted. However, his BH condition would not mitigate his misconduct.

8. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

b. Did the condition exist, or experience occur during military service? Yes. The applicant is 100% service connected for PTSD.

c. Does the condition or experience actually excuse or mitigate the discharge? No. While the applicant is service connected for PTSD, the list of traumatic incidents that his diagnosis is based on are the various criminal behaviors he engaged in, including physically assaulting a romantic partner, physically assaulting another soldier, and stealing from the Army Air Force Exchange. The applicant reported stressor events that do not meet diagnostic criteria for PTSD. However, given his service connection this clinician will accept the diagnosis. Regardless of diagnostic inconsistency, there is no nexus between PTSD and shoplifting and assault. In addition, PTSD does not interfere with the capacity to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, his statement and contentions, the evidence in the records, the medical review, and published Department of Defense guidance for consideration of discharge upgrade requests based upon liberal consideration and/or clemency. The Board found that relief was not warranted.

2. The Board agrees with the medical advisory and the determination made by the previous Board, that the applicant's condition or experience did not excuse or mitigate the discharge, because "... there is no nexus between PTSD and shoplifting and assault. In addition, PTSD does not interfere with the capacity to distinguish right from wrong and act in accordance with the right."

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 decision of the ABCMR set forth in Docket Number AR20180011042, dated 10 March 2020.

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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, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR if the decision has not previously been reconsidered. The applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.
4. 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 Discharge Review Boards (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 a 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.

The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//