

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230005135

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge
- Addition the Army Achievement Medal to his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Permission to appear personally before the Board

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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:

a. "I would appeal to the court firstly that my Army Achievement Medal be mentioned in my discharge, issued 8 May 1996, AR (Army Regulation) 672-5-1 (Military Awards), 52 Aviation Battalion Combat, APO SF 96301-0039; also, my discharge be upgraded. I am apologetic this discharge has cost me opportunity for several employment opportunities over the decades. I beg for leniency."

b. The applicant maintains his under other than honorable conditions discharge resulted from a "misdiagnosed case of PTSD (post-traumatic stress disorder), which clouded my behavior." He expresses regret for the way things turned out and points out he has been employed by a major manufacturing corporation for more than 23 years; additionally, he has been married for over 15 years.

3. A review of the applicant's service record reveals the following:

a. On 31 January 1985, the applicant enlisted in the Regular Army for 3 years; at his entrance on active duty, he was 18 years old. Upon completion of initial entry training and the award of military occupational specialty 76C (Equipment Records and Parts Specialist), orders assigned the applicant to an aviation company in Korea; he arrived at his new unit, on or about 12 July 1985. Effective 1 July 1986, the applicant's leadership promoted him to specialist four (SP4)/E-4.

b. On 9 July 1986, the applicant completed his tour in Korea and orders reassigned him to a quartermaster company on Fort Hood, TX; he arrived, on or about 18 August 1986. On 7 May 1987, the applicant's chain of command reduced him to private first class (PFC)/E-3; his available record does not explain why he was reduced. Effective 1 November 1987, the applicant's unit promoted him back to SP4.

c. On 27 January 1988, the applicant immediately reenlisted for 2 years. On 18 April 1989, the applicant's unit reduced him to PFC; his available service record contains no documentation for this reduction. On 2 June 1989, the applicant's Fort Hood unit reported him as absent without leave (AWOL) and dropped him from unit rolls, on 2 July 1989.

d. On 1 September 1992, civilian authority arrested and confined the applicant on charges of forgery, driving without a license, and "uttering and publishing." On 3 November 1992, a civilian court convicted the applicant and sentenced him to 90 days in jail. On 12 November 1992, civilian authority gave the applicant credit for time served and returned him to military control.

e. On 12 November 1992, orders reassigned the applicant to the U.S. Army Personnel Control Facility (PCF) at Fort Knox, KY. On 19 November 1992, the PCF preferred court-martial charges against the applicant for having been AWOL, from 2 June 1989 to 12 November 1992 (1,259 days or 3 years, 5 months, and 10 days).

f. On 19 November 1992, after consulting with counsel, the applicant voluntarily requested separation under the provisions of chapter 10 (Discharge for the Good of the Service), AR 635-200 (Personnel Separations – Enlisted Personnel). In his request, he affirmed no one had subjected him to coercion, and counsel had advised him of the implications of his request. The applicant further acknowledged he was guilty of the charge against him, and he elected not to submit statements in his own behalf. Later, on 19 November 1992, the applicant departed Fort Knox on indefinite excess leave.

g. On 17 December 1992, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; in addition, the separation authority ordered the applicant's reduction to the lowest enlisted

grade. On 11 January 1993, orders discharged the applicant accordingly. His DD Form 214 shows he completed 4 years, 6 months, and 1 day of net creditable service; item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the following: Army Service Ribbon, Overseas Service Ribbon, and two marksmanship qualification badges. Item 18 (Remarks) reflects the applicant continuous honorable service, from 198520131 to 19880126.

h. The applicant's service record is void of Permanent Orders awarding him the Army Achievement Medal.

4. AR 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is accurate.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

6. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable Conditions discharge be upgraded. He noted, "discharge was due to a misdiagnosed case of PTSD which clouded my behavior."

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.

- Applicant enlisted 31 Jan 1985
- Applicant was deployed to Korea from 08 Jul 1985 - 09 Jul 1986
- His awards included the Army Service Ribbon and Overseas Service Ribbon. Per the ROP findings, there is not any available documentation that applicant was awarded the Army Achievement Medal
- Applicant went AWOL from 02 Jun 1989 - 12 Nov 1992
- During his AWOL period, applicant was apprehended by local authorities (01 Sep 1992) for "forgery, driving without license, uttering and publishing."
- Applicant submitted a Request for Discharge for the Good of the Army (19 Nov 1992) which was subsequently approved.
- The applicant's separation packet was available for review. The applicant's service record was also available. It included his DD Form 214 (Report of Separation from Active Duty), which indicates the Army discharged the applicant Under Other Than Honorable Conditions on 11 Jan 1993.

c. 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, as well as documents from his service record. The VA electronic medical record and DOD health record did not contain any data for applicant, and thus could not be reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that PTSD was a mitigating factor in his discharge. His service record and supporting documents did not contain any medical or behavioral health treatment records from his time in service. There is insufficient evidence that the applicant was ever diagnosed or treated for a potentially mitigating condition during his time on active duty.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns to date. There was a complete absence of JLV documents

which typically indicates service member was never registered with the VA system.

f. After reviewing the application and all supporting documents, this Agency Medical Advisor cannot provide an opine regarding potentially mitigating conditions or experiences without documentation of the behavioral health conditions that contributed to his Under Other Than Honorable Conditions discharge. There was a complete absence of available evidence to support applicant's claim that he had experienced PTSD during his time in service.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? No, there was no available documentation in his service records and JLV to indicate the presence of PTSD or any other behavioral health conditions while in service.

(2) Did the condition exist or experience occur during military service? No, there are not any clinical records provided for this review to support the presence of any behavioral health conditions during his period of active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, since there are not any behavioral health conditions that can be established during applicant's time in service. However, as per liberal consideration, applicant's self-assertion of PTSD alone merits consideration by the board.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 documentation confirming 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 not being 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.

3. The Board found no evidence showing the applicant was awarded the Army Achievement Medal. In the absence of documentation confirming he received this award, the Board determined there is no basis for adding it to his DD Form 214.

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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

2/15/2024

X █

CHAIRPERSON

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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:

a. 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.

b. Section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge. Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision. The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights,

could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed violations of Article 86 (AWOL for more than 30 days) included punitive discharges among its maximum punishments.

4. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, stated when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the regulation required the separation authority to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

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b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//