

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230005621

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) effective 1 June 1992

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 was suffering from post-traumatic stress disorder (PTSD) at the time of his separation and would like for it to be considered in effect, for an upgrade of his under other than honorable conditions discharge. He believes the PTSD was attributed to his time in Desert Shield/Desert Storm. A change in his discharge would increase the possibility of receiving benefits.
3. The applicant provides his DD Form 214 for his active service from 11 May 1989 through 1 June 1996, to be referenced in the service record.
4. A review of the applicant's service record shows:
  - a. The applicant enlisted in the Regular Army (RA) on 11 May 1989. He served as an 88M, Motor Transport Operator, and attained the grade of specialist (SPC)/E-4.

b. He was honorably discharged from active duty on 1 June 1992. His DD Form 214 shows he completed 3 years and 21 days of active service with no lost time. He was assigned separation code LCC and the narrative reason for separation listed as "Convenience of the Government: FY 92 Early Transition Program." It also shows he was awarded or authorized:

- Good Conduct Medal
- Overseas Service Ribbon
- Army Service Ribbon
- Sharpshooter Badge M-16 Rifle
- Sharpshooter Badge Hand Grenade
- Army Lapel Button
- National Defense Service Medal
- Air Assault Badge
- Southwest Asia Service Medal with 3 bronze service stars
- Saudi Arabia: Kuwait Liberation Medal

c. Having had prior service in the RA, he again enlisted in the RA on 2 March 1995.

d. His DA Form 2-1 (Personnel Qualification Record) shows his foreign service included a tour in Korea from 13 August 1989 to 10 August 1990 and a tour in Saudi Arabia from 9 October 1990 to 12 April 1991. It also shows in Block 9 (Awards, Decorations, & Campaigns):

- Army Service Ribbon
- National Defense Service Medal
- Army Lapel Button
- Overseas Service Ribbon
- Air Assault Badge
- Kuwait Liberation Medal – Saudi Arabia
- Southwest Asia Service Medal with 3 bronze service stars
- Army Good Conduct Medal

e. Two DA Forms 4187 (Personnel Actions) shows the applicant's status was changed:

- Absent Without Leave (AWOL) to Drop From Roll (DFR) – date illegible
- DFR to Attached/Present for Duty (PDY) – 20 August 1996

f. A memorandum from the applicant to the Commander, Personnel Control Facility, wherein he knowingly, willingly, and voluntarily declared he was AWOL from the U.S. Army from on or about (O/A) 28 June 1996 to O/A 20 August 1996 (54 days).

g. A DD Form 458 (Charge Sheet) shows on 22 August 1996, court-martial charges were preferred on the applicant for one specification of being absent without leave from O/A 28 June 1996 until O/A 20 August 1996.

h. On 22 August 1996, the applicant consulted with legal counsel and requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant's rank was listed as specialist (SPC)/E-4. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many, or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- there is no automatic upgrading or automatic review of a less than honorable discharge by any Government agency
- he must apply to either the Army Discharge Review Board or the Army Board for Correction of Military Records

i. On 13 February 2002, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

j. Orders 318-1 dated 13 November 1996, shows the applicant was reduced in rank from SPC to private, E-1.

k. Orders 365-0176, dated 30 December 1996, discharged the applicant from active duty with an effective date of 7 January 1997.

l. On 7 January 1997, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 8 months, and 13 days of active service. He was assigned separation code KFS

and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Army Service Ribbon

5. On 3 August 2023, the Army Review Boards Agency notified the applicant he had 30 days to provide copies of Department of Veteran Affairs (VA) documents or other medical documentation to support his claim of PTSD. The applicant has not provided medical documentation to date.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

9. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

10. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

11. Based on the applicant's condition the Army Review Board Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section. 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.

**BOARD DISCUSSION:**

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. 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 considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board noted that the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial. He was afforded consultation with legal counsel and requested discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. Documentation available for review does reveal sufficient documentation, such as supporting medical evidence, post-service accomplishments or letters of reference to weigh in favor if a clemency determination. After due consideration of the applicant's request, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service.

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 for correction of the records of the individual concerned.

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Separation Documents) currently in effect, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential

mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

6. 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, on 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.

7. 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.

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 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.

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.

8. Section 1556 of Title 10, USC, 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//