

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230005667

APPLICANT REQUESTS: Reconsideration of her previous request for upgrade of his under honorable conditions (general) discharge, and an appearance before the Board via video, telephone, or in person.

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

- DD Forms 149 (Application for Correction of Military Record), 15 December 2014 and 2 March 2023
- Photo of a man, undated
- Self-authored statement, 2 March 2023
- DD Form 214 (Report of Separation from Active Duty), 4 April 1972
- Report of Performance Evaluation, 22 March 2005 to 9 May 2012
- Background Check Report, 2 December 2012
- Credit Report from three credit bureaus' (Experian, Equifax, and Transunion), 17 December 2012
- Six Buddy Statements, 28 November 2012 to 1 September 2014
- Letter, Army Board for Correction of Military Records (ABCMR) to Applicant, 28 January 2015
- Fair Issac Corporation (FICO) score, 2 March 2023
- E-mail, ABCMR to Applicant, 9 May 2023
- Credit Report and FICO score from Experian, 14 May 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Dockets Number:

- AC74-00223A on 20 December 1989
- AC74-00223B/AR1999014784 on 9 September 1999
- AR2001065876 on 21 March 2002

2. The applicant states, while he was in advanced Individual Training (AIT) at Fort Gordon, GA, he was informed by his wife that his preacher and one of his friends were both trying to go to bed with his wife. He was 23 years old, immature, and an only child,

so this information caused him to have a mental breakdown. Since his discharge from the Army, he has had an excellent track record of employment, credit history, and 42 years of marriage to his wife [REDACTED] who passed away in [REDACTED]. He has had the stigma of his military discharge on his mind for 43 years. He asks the board for relief as an act of mercy. He notes post-traumatic stress syndrome (PTSD), and mental health issues are related to his request.:

3. The applicant enlisted in the Regular Army on 15 October 1971, for 4 years. He completed basic training and was assigned to attend AIT for training in military occupational specialty 72B (Communications Center Specialist).
4. DA Form 19-32 (Military Police Report), dated 10 January 1972, shows on 8 January 1972, while on guard duty the applicant shot himself in the right foot as a result of a negligent discharge due to him playing with his M-16 rifle chambering and ejecting rounds.
5. A DA Form 2173 (Statement of Medical Exam and Duty Status) and A DA Form 261 (Report of Investigation), dated 8 January 1972 and 3 February 1972, respectively, show:
  - a. The medical officer reported the applicant accidentally shot himself while on guard duty. He noted there was reason to suspect the applicant shot himself purposely in an attempt to secure a discharge from the Army based upon statements made to the military police investigator by the applicant's chain of command.
  - b. The investigating officer reported the applicant's accidental discharge of his weapon was not in the line of duty and was due to his own misconduct.
6. A SF 93 (Report of Medical History) and DA Form 3082-R (Statement of Medical Condition), dated 29 February 1972 and 4 April 1972, show the applicant completed a medical examination as part of his consideration for discharge due to misconduct.
7. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a dully constituted DD Form 214 that shows the following:
  - a. On 4 April 1972, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (for the good of the service - in lieu of trial by court-martial), with an under other than honorable conditions (UOTHC) characterization of service in the grade of E-1. He received a separation program number of "246" and a reenlistment code of "3."

b. He completed 5 months and 20 days of net active service during the period covered.

c. Block 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

8. The applicant provides:

a. Six buddy statements from friends and family stating that he is a great husband, father, friend, employee, and co-worker who has outstanding character and has a good standing in his community. He loves to help others and sets a notable example for others to follow at work, home, and church.

b. Various job performance evaluations, a background check report, and credit and FICO score report documentation show he is a respectable and responsible citizen.

9. A memorandum from examiner [REDACTED], dated 14 February 1974, gives a chronological overview of the applicant's discharge process and further shows:

a. On 12 October 1973, the applicant's appeal for recharacterization of his discharge was denied by the Army Discharge Review Board (ADRB) during a formal hearing in which he reconfirmed under oath that he intentionally wounded himself.

b. On 28 November 1973, the applicant submitted a request for correction of his records via counsel from the American Red Cross.

10. The applicant's records show, on 16 August 1978, the ADRB upgraded his discharge characterization of service from UOTHC to under honorable conditions (general).

11. On 29 August 1978, the applicant was notified by the ADRB that their findings, conclusions, and reasons, for their decision in his case was sent to the Adjutant General's office for action.

12. On an undisclosed date, after reviewing the findings and conclusion of the ADRB, the Adjutant General directed the applicant be informed that his discharge characterization was changed to under honorable conditions (general). He was issued a new DD Form 214 which showed, his new characterization of service and new separation program designator code "JFS."

13. The ABCMR considered the applicant's request for upgrade of his under honorable conditions (general) discharge on 20 December 1989, 9 September 1999, and

21 March 2002. 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.

14. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. The applicant provides no evidence that would indicate the contrary.

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

16. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Honorable Conditions discharge be reconsidered for an upgrade to Honorable due to experiencing PTSD and a "mental breakdown" during his time in service. He is also requesting to make a personal appearance to the Board.

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 in the Regular Army on 15 Oct 1971
- An MP Report (10 January 1972) indicated applicant shot himself in his foot while on guard duty (8 January 1972). This was reportedly due to "negligent discharge...playing with his M-16 rifle chambering and ejecting rounds."
- The attending medical officer noted, "there was reason to suspect the applicant shot himself purposely in an attempt to secure a discharge from the Army based upon statements made to the military police investigator by the applicant's chain of command."
- Per the conclusions of the investigating officer, "applicant's accidental discharge of his weapon was not in the line of duty and was due to his own misconduct."
- The applicant's separation packet is unavailable for review. However, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant "Under Other Than Honorable Conditions" on 04 Apr 1972 that was subsequently upgraded to

Under Honorable Conditions (General) discharge recommended by the ADRB (29 Aug 1978) and ultimately approved by the Adjutant General.

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), Personal Statement, his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that PTSD and a mental breakdown were mitigating factors in his discharge. He also contends his misconduct was due to the impact of his behavioral health condition(s). His service record and supporting documents did contain an ABCMR Memorandum of Consideration (21 Mar 2002). It indicated, "applicant claims that still being depressed after this meeting with his unit commander, he shot himself in the foot a few weeks later while on guard duty. He states that this act of misconduct was his fault, but that the Army also bears some responsibility because he was never offered counseling for his depression and being homesick." The supporting documentation also provided several post-military work performance reviews and reference letters which attested to his high quality of work and outstanding character. Based on this documentation in its entirety, there is a lack of evidence the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. There was one outpatient encounter entry in JLV that was unrelated to behavioral health matters.

f. In summary, although applicant is not service connected for any behavioral health conditions, his self-assertion is that he experienced PTSD and a mental breakdown (depression) which had reportedly been experienced during applicant's time in service. After reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor there is insufficient evidence of mitigating conditions (PTSD and a mental breakdown) that significantly contributed to his misconduct. In addition, even if PTSD and a mental breakdown (depression) could be established, it does not mitigate for purposeful self-injury, as PTSD is not associated with this manner of misconduct. However, per Liberal Consideration the applicant's assertion of PTSD and a mental breakdown (depression) warrants consideration by the board.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, there is applicant's self-assertion he experienced PTSD and a mental breakdown (depression) contributing to his misconduct while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is applicant's self-assertion he experienced PTSD and a mental breakdown (depression) while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, PTSD and a mental breakdown (depression) does not mitigate for purposeful self-injury with a firearm as PTSD is not associated with such misconduct. That said, in accordance with Liberal Consideration, the applicant's contention of PTSD and a mental breakdown (depression) warrants consideration by the board.

#### BOARD DISCUSSION:

1. 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 carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence of mitigating conditions (PTSD and a mental breakdown) that significantly contributed to his misconduct. The opine noted, in addition, even if PTSD and a mental breakdown (depression) could be established, it does not mitigate for purposeful self-injury, as PTSD is not associated with this manner of misconduct.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of self-injury. However, the Board commends the applicant on his post service achievements and character letters of support that attest to his honorable conduct and his commitment to his community. The Board agreed the applicant previously received a discharge upgrade to under honorable conditions (General) characterization of service. The Board determined that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board found reversal of the previous Board decision is without merit and denied relief.

3. The applicant's request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.

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 Board found 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 the decision of the ABCMR set forth in Docket Number AC74-00223A on 20 December 1989, AC74-00223B/AR1999014784 on 9 September 1999 and AR2001065876 on 21 March 2002.

3/4/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

2. Army Regulation 15-185 (ABCMR) states 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 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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.

5. 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, 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//