

IN THE CASE OF: ██████████

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230006494

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable
- a personal appearance before the board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record), 14 March 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 20 August 1992
- 100 pages of medical documentation, from 19 July 1988 through 14 April 2021

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, in effect, from March to November 1989, while serving he tragically lost his squad leader to a motor vehicle accident, his best friend was killed by friendly fire in "Operation Just Cause" 17 December 1989, his ex-roommate committed suicide in their room one month after returning from Panama in 1990. The applicant notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 19 October 1988, for a 3-year period. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was private first class (PFC)/E-3.
4. DA Forms 4187 (Personnel Action) show the applicant's duty status changed as follows:

- a. On 9 August 1990, his status changed from present for duty (PFD) to absent without leave (AWOL).
 - b. On 13 August 1990, his status changed from AWOL to PFD.
 - c. On 13 September 1991, his status changed from PFD to Confined Civil Authorities. It states the Soldier was apprehended and was being held in the County Jail awaiting court appearance.
 - d. On 27 September 1991, his status changed from Confined Civil Authorities to PFD. It states the Soldier was released pending court date.
 - e. On 15 January 1992, his status changed from PFD to AWOL.
 - f. On 21 January 1992, his status changed from AWOL to PFD. It states the Soldier returned on his own accord.
 - g. On 10 July 1992, his status changed from PFD to Confined Civil Authorities. It states, Soldier is confined to the County Jail.
5. He accepted company grade non-judicial punishment under the provision of Article 15, of the Uniform Code of Military Justice on/for the following:
- a. On 6 September 1990, without authority on or about 9 August 1990 he absented himself without leave and remained absent until on or about 13 August 1990. His punishment imposed was reduction to the grade of E=2, forfeiture of \$100.00, extra duty and restriction for 14 days.
 - b. On 21 May 1991, he unlawfully struck another Soldier in the face with a bar of soap wrapped in a t-shirt on or about 15 October 1991. His punishment imposed was reduction to E-2, suspended, and 30 days extra duty.
 - c. On 20 February 1992, he wrongfully used marijuana on or about 29 January 1992. His punishment imposed was reduction to E-2, 45 days extra duty, forfeiture of \$440.00 per month for two months, suspended.
6. On 13 March 1992, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). He noted the reasoning for the proposed separation was the applicant's reckless driving, failure to report(s), his bar to reenlist, and misconduct-abuse of illegal drugs and distribution of LSD (Lysergic acid diethylamide).

7. The applicant consulted with counsel on 18 March 1992 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration by an administrative separation board. He understood he may encounter prejudice in civilian life. Additionally, he elected to submit a statement in his own behalf stating, in effect, he requested a general discharge for the benefit of his family, his wife was seven months pregnant, and he wanted to ensure he was able to get a job and support his family.

8. A separation board was convened on 1 July 1992, the board found the applicant engaged in a pattern of misconduct and committed a serious offense, both recognized under AR 635-200, Chapter 14. The applicant was determined to be undesirable for further retention in the military service and his rehabilitation was not deemed possible. The Board recommended the applicant be separated from the service and that he should receive an UOTHC characterization of service.

9. On 13 August 1992, the applicant's immediate commander recommended separation under AR 635-200, paragraph 14-12c, commission of a serious offense, with an UOTHC discharge issued.

10. On 10 August 1992, the separation authority approved the board's finding and recommendation, and further directed an UOTHC discharge be furnished with reduction to the grade of E-1.

11. The applicant was discharged accordingly on 20 August 1992, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct/abuse of illegal drugs, in the grade of E-1. His service was characterized as UOTHC. He received separation code "JKK" and reentry code of "3B". He completed 3 years, 7 months, and 25 days of net active service with time lost on the following:

- from 9 August 1990 to 13 August 1990
- from 13 September 1991 to 26 September 1991
- from 15 January 1992 to 21 January 1992
- from 10 July 1992 to 20 August 1992

12. He additionally provides medical documentation from his Official Military Personnel File and civilian doctors, approximately 100 pages, from the earliest medical examination and/or report starting on or about 18 July 1988 through on or about 14 April 2021.

13. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

14. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency. 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.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced PTSD, which mitigates his discharge.

b. 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 on 19 October 1988; 2) The applicant was found AWOL 9-13 August 1990; 3) On 13 September 1991, the applicant was confined by Civil Authorities. The Soldier was apprehended and was being held in the County Jail awaiting court appearance; 4) The applicant was AWOL from 15-21 January 1992; 5) On 10 July 1992, the applicant was again confined by Civil Authorities. It states, Soldier is confined to the County Jail; 6) On 21 May 1991, the applicant received nonjudicial punishment (NJP) for striking another Soldier in the face with a bar of soap wrapped in a t-shirt; 7) On 20 February 1992, he received NJP for using marijuana; 8) The applicant was discharged on 20 August 1992, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense), for misconduct/abuse of illegal drugs. His DD Form 214 confirms his character of service was UOTHC, with separation code JKK and reentry code 3B. He was credited with 3 years, 7 months, and 25 days of net active service with time lost from 9 August 1990 to 13 August 1990, from 13 September 1991 to 26 September 1991, from 15 January 1992 to 21 January 1992, and from 10 July 1992 to 20 August 1992.

c. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

d. On his application, the applicant noted PTSD was related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation.

The applicant reported being exposed to losses of fellow service members to non-combat related events, and there is evidence he was involved in a car accident during his active service. There is also evidence the applicant reported depressive symptoms and problems sleeping during his Report of Medical History, which was completed as part of his Chapter proceedings on 05 February 1992. There was insufficient evidence the applicant was diagnosed with PTSD or another mental health condition while on active service. A review of JLV provided evidence the applicant has engaged in the VA since 2021. He reported symptoms of depression, anger, and insomnia related to events in the military. The applicant was not diagnosed with service-connected PTSD, and he does not receive service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence.

Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The applicant did engage in avoidant behavior such as repeatedly AWOL, which can be a sequelae to PTSD. He also engaged in substance use, which could also be defined as avoidant behavior. However, the presence of repeated misconduct is not sufficient to establish a history of PTSD during active service. In addition, he also was engaged in violent behavior toward another Soldier and also was confined by civil authorities. There is no nexus between the applicant's report of PTSD and these types of misconduct in that: 1) these types of misconduct are not part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 the medical review, the Board concurred with the advising official finding insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The opine found no nexus between the applicant's report of PTSD and these types of misconduct are not part of the natural history or sequelae of PTSD. Evidence show PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

2. The Board recognized the applicant engaged in avoidant behavior with his repeated AWOL, which the opine noted as a sequelae to PTSD. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the presence of repeated misconduct and conviction of selling LDS on two counts, noting it is not sufficient to establish a history of PTSD during active service. Furthermore, the Board found the applicant also was engaged in violent behavior toward another Soldier and also was confined by civil authorities. The applicant provided no post service achievements or character letters of support to attest to his honorable conduct for the Board to weigh a clemency determination. The Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an honorable discharge. Therefore, the Board 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:

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.

3/29/2024

X 

CHAIRPERSON



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. Section 1556 of Title 10, U.S. Code, 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. 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.

3. AR 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. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application. 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.

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides 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 states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 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 PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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, 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//