

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006738

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) progress notes

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 AR1999033320 on 7 June 2000.
2. The applicant states he was being harassed by another Soldier. There was some sexual harassment involved. He reported it but nothing was done. He went absent without leave (AWOL) for 17 days. He has mental health concerns from the experience.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) and sexual assault/harassment issues are related to his request.
4. On 17 October 1979, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11H (Heavy Anti-armor Weapons Crewman). The highest grade he attained was E-2.
5. On 14 May 1980, the applicant was reported as AWOL and remained absent until his apprehension by civil authorities on 29 May 1980.
6. Before a summary court-martial on 24 June 1980, at Fort Hood, TX, the applicant was found guilty of one specification of AWOL. The court sentenced him to confinement at hard labor for 30 days, forfeiture of \$299.00 pay for one month, and reduction to E-1.

7. On 7 August 1980, he accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for previous indulgence in intoxicating liquor, resulting in incapacitation for proper performance of duty on or about 2 August 1980. His punishment included forfeiture of \$90.00 pay for one month, and seven days restriction and extra duty.

8. On 2 September 1980, the applicant was reported as AWOL a second time and remained absent until he returned to military authorities on 4 September 1980.

9. On 8 September 1980, he accepted NJP under Article 15 of the UCMJ, for going AWOL from on or about 2 September 1980 until on or about 4 September 1980. His punishment included forfeiture of \$65.00 pay for one month, and ten days restriction and extra duty.

10. On 11 September 1980, the applicant's commander recommended the applicant be separated from the service under the provisions of Army Regulation 635-200 (Personnel Separation – Enlisted Personnel), paragraph 14-33, for misconduct – frequent incidents of a discreditable nature. As the specific reasons, his commander cited the applicant's court-martial, two NJPs, and multiple adverse counselings for his behavior and attitude.

11. The applicant's commander notified the applicant on 15 September 1980, of pending discharge proceedings under the provisions of Army Regulation 635-200, paragraph 14-33, for misconduct – frequent incidents of a discreditable nature.

12. On 16 September 1980, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him. He acknowledged he understood that, as the result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under both Federal and State laws. He declined to submit a statement in his own behalf.

13. On 18 September 1980, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

14. Consistent with the chain of command recommendations, the separation authority approved the recommended discharge on 23 September 1980 and directed the issuance of an UOTHC Discharge Certificate.

15. The applicant was discharged on 26 September 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged

under the provisions of Army Regulation 635-200, paragraph 14-33b(1), for frequent involvement in incidents of a discreditable nature with civil or military authorities. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JKA and Reentry Code 3B. He completed 9 months, and 29 days of net active service this period with 41 days of lost.

16. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 7 June 2000, the Board voted to deny relief and determined that the applicant had failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustices.

17. In the processing of this case, a search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

18. The applicant provides VA progress notes that shows he has been diagnosed and received treatment for various medical issues, to include PTSD, and depression.

19. 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.

20. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable discharge be reconsidered for upgrade to Honorable due to experiencing PTSD/MST and sexual harassment during his time in service.

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 17 Oct 1979. His military occupational specialty (MOS) was Heavy Anti-armor Weapons Crewman.
- On 24 Jun 1980 a special court-martial found him guilty for going AWOL from 14-29 May 2023. This was followed by an Article 15 (NJP) “for previous indulgence in intoxicating liquor, resulting in incapacitation for proper performance of duty” (02 Aug 1980) and for going AWOL a second time from 2-4 Sep 1980.
- On 11 Sep 1980, “applicant's commander recommended the applicant be separated from the service...for misconduct – frequent incidents of a discreditable nature...court-martial, two NJPs, and multiple adverse counselings for his behavior and attitude.”

- The applicant's separation packet is available for review. Additionally, 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 26 Sep 1980.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed includes 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 an MST were mitigating factors in his discharge. He also contends his AWOL episodes were due to the impact of his behavioral health conditions. His service record and supporting documents did contain a substantial number of VA treatment notes that exclusively pertained to his treatment at the domiciliary (Dec 2022-Feb 2023). A progress note (10 Feb 2023) indicated, "patient is a 60 - year- old male with a history of alcohol use disorder, stimulant use disorder (meth, cocaine), PTSD, adjustment disorder, and nicotine use disorder. He was admitted into the domiciliary program on 12/27/2022." A Psychosocial Assessment at the domiciliary (28 Dec 2022) indicated, "Veteran denied any deployment or combat 'but I was put on red alert.' Veteran reported, 'I love the military.' Veteran reported he did struggle with another person while in the services. 'I was getting in a lot of fights and going AWOL.'" He also denied the same day any unwanted sexual attention or forced sexual contact, but acknowledged having to deal with racism while in the Army. In addition to being diagnosed with some substance dependence diagnoses, he was also diagnosed with "Chronic PTSD" while at the domiciliary. Based on this documentation in its entirety, there is evidence the applicant was diagnosed or treated for a mitigating condition (PTSD) that potentially occurred or worsened during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. A Social Work Case Management note (12 Oct 2022) indicated, "Veteran reports having been in the Army from Sept 1979-Oct 1980 receiving an OTH. Veteran reports having gone AWOL as he was missing his family and wanted to see them before going to his permanent duty station." A Consult - residential treatment program note (18 Oct 2022) indicated, "Veteran reports that he had a very rough childhood and reports that it has definitely affected how he responds to people. Veteran reported that his family is Latino, but he has fair hair and eyes which then made him an outcast of sorts. Veteran reported experiencing emotional and physical abuse in his family, but also bullying from peers throughout his childhood and into his time in the military. Veteran reports that he has severe trust issues and feels paranoid, as if people are after him, all the time." The VA problem list included Adjustment disorder with anxiety; PTSD, Chronic; Alcohol dependence in remission; Other stimulant

dependence, uncomplicated; Cocaine dependence in remission; Homeless, unspecified.

f. In summary, although applicant is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is the applicant's own assertion he has been treated for PTSD/MST by VA which had 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 that there is sufficient evidence of mitigating conditions (PTSD/MST) that significantly contributed to the specific misconduct of alcohol abuse and AWOL episodes. Documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had more likely than not experienced a worsening of chronic PTSD during his time in service further exacerbated by MST(s). Despite previously documented denial of MST(s), under liberal consideration, applicant's self-assertion of MST on DD Form 149 is sufficient to establish occurrence of MST.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he more likely than not experienced a worsening of pre-military PTSD during his time in service that was further exacerbated by MST(s) contributing to his alcohol abuse and AWOL episodes while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is considerable evidence he encountered PTSD/MST related symptoms while on active duty per applicant's own assertion and JLV documentation.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of alcohol abuse and AWOL episodes as PTSD/MST is often associated with the emergence or escalation of alcohol abuse or dependence and AWOL episodes. As per liberal consideration, applicant's self-assertion of an MST alone merits consideration by the board.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct, the reason for separation and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief and an upgrade of his under other than honorable conditions discharge to honorable is warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999033320 on 7 June 2000. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending his DD214 ending 26 September 1980 showing in

- item 24 (Characterization of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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. 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.

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.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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.

c. 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. The applicant must provide new relevant 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 the 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.



c. Chapter 14, paragraph 14-33b(1) provides for the separation of Soldiers when they have patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities. The issuance of a discharge UOTHC is normally considered appropriate for separations under the provisions of this chapter.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//