

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230006977

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Two Character Reference Letters/Support Letters
- Department of Veterans Affairs Rating Decision and medical records (412 pages)
- Previous application(s) to this Board

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 AR20220008910 on 18 April 2023.

2. The applicant states he is submitting information in support of a request for character of discharge upgrade due to undiagnosed illness (combat-related post-traumatic stress disorder (PTSD)). He asks the Board to take this into consideration when making a decision. He previously described three incidents that occurred during his deployment in support of Operation Desert Storm:

a. First incident, he went to throw his ruck sack out of the helicopter, and his arm was entangled in one of the straps. It snatched him out of the helicopter causing him to fall over 6 feet or more to the ground resulting in a dislocated shoulder.

b. Second incident, he served as the door gunner on a helicopter; while hovering approximately 40 to 60 feet above ground the helicopter suddenly lost power; there was a loud explosion in the engine compartment resulting in the helicopter taking a nosedive into the ground; a lot of them received physical and mental injuries.

c. Third incident, the helicopter that was next to theirs drifted into their space; to avoid a collision, the pilot had to maneuver in such a way that the blades of their

Blackhawk struck the ground causing the cargo that they were carrying to shift. It resulted in broken legs and other injuries of some of the soldiers.

3. The applicant provides two character reference letters:

a. A chaplain for the Disabled American Veterans states he has a high regard for the applicant and the unselfish humanitarian work that he and his wife provide to their community. Through his contact with the applicant, he has found him to be a self-motivated person that is compassionate, generous, kind and of great integrity. He seeks to improve him. He and his wife are co-ministers in a local church that does community outreach to the homeless in this area which has positively impacted the community.

b. A minister states the applicant is a kind and loving man, who is also a hard worker for his family and community. He is a helper in the church, a helper to the homeless, and he plays an important part in the outreach program

4. The applicant's complete military records are not available for review. An exhaustive search was conducted to locate his records, but they could not be found. The applicant provides sufficient documents for the Board to conduct a fair and impartial review of his case. The applicant's DD Form 214 shows:

a. He entered active duty on 11 July 1988. He held military occupational specialty 11B, Infantryman. He was assigned to an infantry unit at Fort Campbell, KY.

b. He was discharged on 1 July 1991 in the rank/grade of private/E-1, in accordance with chapter 10 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) in lieu of trial by a court-martial. He received an under other than honorable conditions characterization of service.

- He completed 2 years, 11 months, and 20 days of net active service this period with 1 year, 6 months, and 28 days of foreign service.
- He was awarded or authorized Army Achievement Medal, Army Service Ribbon, National Defense Service Medal, Southwest Asia Service Medal with two bronze service stars, Combat Infantryman Badge, Overseas Service Ribbon, and the Marksman Qualification Badge with Rifle and Grenade bars

5. On 18 April 2023, the ABCMR considered his request for an upgrade of his discharge.

a. Prior to rendering a decision on his case, and since the applicant asserted he was experiencing PTSD which mitigates his misconduct during his active service, a medical officer reviewed the applicant's case and determine that based on the available information, there is insufficient information available to opine if the applicant had a

mental health condition or experience that may mitigate his discharge, due to the insufficient information on the nature of misconduct, which resulted in his discharge. However, there is sufficient information that the applicant has been diagnosed with PTSD related to his experiences while on active service. The applicant's contention that PTSD resulted in his misconduct is sufficient for consideration per the Liberal Consideration Policy.

b. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant's separation packet is not available for review. Based on other evidence, the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions characterization of service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The applicant contends he had PTSD which mitigates his misconduct. He reports experiencing PTSD while in active service, and the applicant was awarded treatment for service-connected PTSD. The Board agreed however, that there is insufficient information available to opine if the applicant had a mental health condition or experience that may mitigate his discharge, due to the insufficient information on the nature of misconduct, which resulted in his discharge. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

6. MEDICAL REVIEW:

a. Applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149 and supporting documents, his ABCMR Record of Proceedings (ROP), his separation military documentation, and the VA medical records.

b. Due to the period of service, there are no active duty electronic medical records available for review.

c. The applicant submitted a VA Rating Decision letter dated 14 October 2022 documenting service connection for PTSD for treatment purposes only due the characterization of service.

d. After review of all available information, the applicant is diagnosed and service connected by the VA for PTSD, which is a potentially mitigating BH condition. However, the basis of separation is not contained in the applicant's file, so medical mitigation cannot be determined. Without details of the misconduct that led to the applicant's separation, the Board's Medical Advisor cannot determine if there is a nexus between PTSD and the misconduct.

Kurta Factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is diagnosed and service connected by the VA for PTSD. Service connection establishes that the applicant's PTSD existed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant is diagnosed and service connected by the VA for PTSD, which is a potentially mitigating BH condition. However, the basis of separation is not contained in the applicant's file, so medical mitigation cannot be determined. Without details of the misconduct that led to the applicant's separation, the Board's BH Advisor cannot determine if there is a nexus between PTSD and the misconduct.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests.

2. The Board noted the absence of records documenting the misconduct that led to the applicant's voluntary request for discharge in lieu of trial by court-martial; however, the Board found the character references he provides and his confirmed diagnosis of PTSD sufficient as a basis for relief. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

8/18/2024

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states 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 that 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.

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. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. 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. 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. 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.

6. Section 1556 of Title 10, United States Code, 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//