

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230006981

APPLICANT REQUESTS: an upgrade of his August 1998 under other than honorable conditions to general or honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Discharge Orders 223-0157, dated 11 August 1998
- DD Forms 214 (4) (Certificate of Release or Discharge from Active duty)

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:

a. He grew up with divorced parents and lived in a low-income household and in some cases living in the wrong neighborhoods. When he graduated high school, he knew that his parents could not afford to send him to college, so he enlisted in the Army. He quickly realized that he was not mature enough to continue his service in the Army. He started to see himself going down the wrong path and decided to go absent without leave (AWOL). He wanted to get himself together and to deal with his family issues and to become a better person. Once he matured enough, he answered for the wrong he had done.

b. Three years later, he was able to enlist into the Maryland Army National Guard where he continues to for the serve for more than 24 years. He has been able to serve faithfully, honestly, and meritoriously the state of Maryland and the Nation. He has deployed several times both in the state and across the globe. He has been entrusted and granted a secret clearance and move up the ranks in the National Guard. As shown on his DD Form 214's he has been awarded several accommodation medals, achievement medals and several state awards. He has been able to better himself and

fulfill an obligation through maturing and learning from his mistakes. He might have been able to do all these things if were mature enough when he was 18 years old. At the time of discovery, he did not think too much about it. Even after serving over 24 years in the National Guard, it has not been an issue until recently.

3. The applicant provides:

a. Discharge orders 223-0157, dated 11 August 1998, that assigned him the U.S. Army Transition Center at Fort Knox, KY with a reporting date of 14 August 1998.

b. A copy of his DD Form 214 with a separation date of 14 August 1998. He completed 1 year, 10 months and 26 days. He received a discharge of under other than honorable conditions.

c. A copy of his DD Form 214 that shows he was honorably released from active duty on 18 April 2003. He completed 1 year and 19 days of net service this period.

d. A copy of his DD Form 214 that shows he honorably released from active duty on 17 August 2017, after having served in Kuwait/Qatar/Jordan December 2016 to April 2017

e. A copy of his DD Form 214 that shows he was d honorably released from active duty 25 June 2021. He served 3 months and 11 days of net active service this period.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 29 August 1995.

b. On 27 February 1997, Mr. [REDACTED] wrote a letter of evaluation at the request of [REDACTED] provides insight relating to the applicant's drinking and how he would handle his feelings coupled by having a very tough upbringing. The letter has been attached with greater details for the Board to review.

c. DD Form 458 (Charge Sheet), dated 11 March 1998, shows courts-martial charges were preferred against the applicant for one specification of AWOL on or about 19 February 1997 and did remain so absent until or about 6 March 1998.

d. ATZK-PM Form 4939 (Characterization of Service Checklist for Administrative Discharge Actions) was completed on 15 June 1998. Item 11 (Medical or other data meriting consideration in the medical evaluation) shows none. Although the form was completed it is void of the commander's signature.

e. On 11 March 1998, he consulted with legal counsel, and he 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. He acknowledged:

- he was guilty of the charge against him or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct discharge or dishonorable discharge
- he did not desire further rehabilitation or a desire to perform further military service
- he would be deprived of many or all Army benefits and that he may be ineligible for many, or all benefits administered by the Veterans Administration and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

f. On 15 June 1998 the command recommended a discharge in accordance with paragraph 10-3, AR 635-200, the request for discharge in lieu of trial by courts-martial with an Under Other Than Honorable Conditions (UOTHC).

g. On 19 June 1998, the applicant provided a personal statement which states he went AWOL to get a better job in the civilian world and that he was not mentally able to handle the stress. So, he went home to figure it all out. During his AWOL, he volunteered at the local fire department and therefore he is asking for a general discharge.

h. Consistent with the chain of command recommendation, the separation approval authority approved the applicant's request on 26 June 1998, and directed he be issued an UOTHC discharge.

i. On 14 August 1998, he was discharged from active duty under the provisions of AR 635-200, Chapter 10 for the good of the service - in lieu of trial by court-martial. is DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 10 months and 26 days with lost time from 19 February 1997 to 5 March 1998. He was assigned Separation Code KFS and Reentry Code 3. He was awarded or authorized the:

- National Defense Service Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Hand Grenade Expert Qualification Badge

5. By regulation, a member who has committed an offense 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.

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

7. MEDICAL REVIEW:

a. The applicant requests an upgrade his UOTHC discharge to General or Honorable. He contends his misconduct was related to PTSD.

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 into the Regular Army on 29 August 1995; 2) On 22 March 1997, court-martial charges were preferred against the applicant for one specification of being Absent Without Leave (AWOL) on or about 19 February 1997 until; 3) On 11 March 1998, courts-martial charges were preferred against the applicant for one specification of AWOL on or about 19 February 1997 and did remain so absent until or about 6 March 1998; 4) On 15 June 1998 the command recommended a discharge in accordance with paragraph 10-3, AR 635-200, the request for discharge in lieu of trial by courts-martial with an Under Other Than Honorable Conditions; 5) On 14 August 1998, he was discharged from active duty under the provisions of AR 635-200, Chapter 10 for the good of the service - in lieu of trial by court-martial.

c. The VA electronic medical record (JLV), ROP, and casefile were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile was a letter of evaluation dated 27 February 1997 that stated, in part, that the applicant had been receiving counseling for alcohol use since 1994, that was used to "balance himself out" and address "inner feelings", related to a "tough upbringing... and therefore has a lot of hostility and frustration bottled up". The counselor noted that when the alcohol was not effective the applicant was prone to acting out physically. He reportedly joined the Army as a "last hope" even though the counselor advised against it. Also included in the casefile was ATZK-PM Form 4939 (Characterization of Service Checklist for Administrative Discharge Actions), completed on 15 June 1998. Item 11 (Medical or other data meriting consideration in the medical evaluation) shows none.

d. A review of JLV shows the applicant 30 percent SC for various physical disabilities but does not show a SC BH disability. However, Initial PTSD DBQ dated 13 September 2022 shows the applicant diagnosed with PTSD related to his deployment to Cuba in 2006-07 whereby he witnessed others injured and killed, witnessing Soldiers physically assaulted by other Soldiers during his deployment to Kuwait in 2016-17, and having lost a friend (fellow Soldier) to an MVA in 2001. He reported significant symptom onset in 2006-07 characterized by depression, anxiety, detachment, low mood, decreased

motivation, sleep problems, nightmares, irritability, angry outburst, and social withdrawal. The provider deemed the applicant endorsed sufficient symptoms to meet criteria for PTSD, related to military service. Records show the applicant with a single BH treatment encounter with the VA, that occurred on 23 October 2023, whereby the applicant reported experiencing depression and anxiety that leads to difficulties with his family. He endorsed depressed mood, anhedonia, insomnia, fatigue, difficulty concentration, and isolation. He also reported a history of stressful event that occurred in the military, that resulted in him being nervous and on edge most days. He was diagnosed with Unspecified Depressive Disorder, Unspecified Anxiety Disorder, with a rule-out of Unspecified Trauma or Stress Related Disorder, and a consult was placed for outpatient care. JLV was void of additional BH treatment encounters.

e. The applicant requests an upgrade his UOTHC discharge to General or Honorable. He contends his misconduct was related to PTSD. A review the records shows the applicant 30 percent SC for physical disabilities but not SC for a BH disability. However, the applicant's Initial PTSD DBQ dated 13 September 2022 shows the applicant diagnosed with PTSD related to deployments to Cuba (2006-2007) and Kuwait (2016-2017). Given the diagnosis of PTSD was related to events that occurred after the applicant's AWOL (February 1997 – March 1998) and given that during the Initial PTSD DBQ he reported an onset of BH conditions in 2006/2007, his diagnosis of PTSD does not mitigate the applicant's misconduct characterized by AWOL during his period of service from August 1995 – August 1998. Additionally, in the applicant's self-statement he endorsed that he realized the Army was not the right choice for him during the initial period of service, that he could find a better job elsewhere, and so he decided to go AWOL. This suggests clear forethought and intent on behalf of the applicant.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his period of service from (August 1995 to August 1998). However, the applicant contends his misconduct was related to PTSD, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review the records shows the applicant 30 percent SC for physical disabilities but not SC for a BH disability. However, the applicant's Initial PTSD DBQ dated 13 September

2022 shows the applicant diagnosed with PTSD related to deployments to Cuba (2006-2007) and Kuwait (2016-2017). Given the diagnosis of PTSD was related to events that occurred after the applicant's AWOL (February 1997 – March 1998) and given that during the Initial PTSD DBQ he reported an onset of BH conditions in 2006/2007, his diagnosis of PTSD does not mitigate the applicant's misconduct characterized by AWOL during his period of service from August 1995 – August 1998. Additionally, in the applicant's self-statement he endorsed that he realized the Army was not the right choice for him during the initial period of service, that he could find a better job elsewhere, and so he decided to go AWOL. This suggests clear forethought and intent on behalf of the applicant.

#### BOARD DISCUSSION:

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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (AWOL, February 1997 to March 1998). After being charged, he 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 discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewer. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature 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.

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 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.



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 635-200 (Personnel Separations - Enlisted Personnel), 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 provides 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.

c. Chapter 10 of that regulation provides, in pertinent part, 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.

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//