

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230007120

APPLICANT REQUESTS: in effect, reconsideration of his previous request for an upgrade of his dishonorable discharge to at least general under honorable conditions.

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

- two DD Forms 293 (Application for the Review of Discharge from the Armed Forces of the United States), 18 July 2023 and 1 September 2023
- Fire Base 4 Certificate, 30 November 1985
- County Recovery House After Care Program Certificate of Completion, 7 January 2008
- three Letters of Support, 20 June 2019 and 28 February 2023 (two)
- County Certificate of Death, 2 December 2021

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 AR20190007615 on 16 September 2021.
2. The applicant states he is still sober after the death of his parents and has been working with convicts and veterans for nearly 17 years. He notes post-traumatic stress disorder (PTSD) as a related condition to the circumstances that resulted in his separation; however, he did not elaborate.
3. The applicant enlisted in the Regular Army on 30 April 1985. Upon completion of initial entry training and award of military occupational specialty (MOS) 13B (Cannon Crewman), he was assigned for duty in Korea on or about 29 August 1985.
4. The applicant provided a Fire Base 4 Certificate, 30 November 1985, stating he served honorably at Fire Base 4 Papa 3 while assigned to Alpha Battery, 2d Battalion, 17th Field Artillery Regiment, along the demilitarized zone in Korea for an unspecified period.

5. Item 5 (Oversea Service) of his DA Form 2-1 (Personnel Qualification Record – Part II) shows he received overseas tour credit for service in Far East Pacific Area-Korea from 29 August 1985 through 24 August 1986.
6. On 10 October 1986, a physical profile board convened to consider his physical defect of severe bilaterally high-frequency sensory-neural hearing loss (4K-6K), noting his hearing had deteriorated significantly and that a mandatory MOS change was indicated. His assignment limitations included no exposure to high-intensity noise or firing of weapons without properly fitted hearing protection, annual hearing tests, and mandatory MOS change. He was deemed worldwide deployable. His records do not show an MOS change occurred.
7. On 18 June 1987, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully possessing an unauthorized military identification card on or about 28 May 1987. His punishment consisted of reduction to private/E-2, forfeiture of \$172, and 10 days of extra duty.
8. His service records contain three DA Forms 4187 (Personnel Action) showing the following duty status changes:
 - 24 June 1987 – from present for duty to absent without leave (AWOL)
 - 8 July 1987 – from AWOL to present for duty
 - 1 September 1987 – from present for duty to confined by military authorities – pending pretrial confinement
9. On 1 October 1987 before a general court-martial at Fort Carson, CO, the applicant was found guilty of:
 - one specification of AWOL from on or about 24 June 1987 until 8 July 1987
 - one specification of wrongful distribution of .6 grams, more or less, of cocaine, on or about 8 June 1987
 - one specification of operating a vehicle while drunk on or about 15 August 1987
10. The court sentenced him to a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.
11. On 1 November 1987, the general court-martial convening authority approved the sentence and, except for the dishonorable discharge, ordered it duly executed, noting confinement in excess of 15 months was suspended for 15 months. The record of trial was forwarded for appellate review.
12. On 25 February 1988, the U.S. Army Court of Military Review affirmed the findings and sentence.

13. On 18 April 1988, the U.S. Army Clemency and Parole Board approved his parole and directed his release from confinement effective 25 May 1988.

14. U.S. Disciplinary Barracks, Fort Leavenworth, KS, General Court-Martial Order Number 310, 29 August 1988, affirmed the applicant's sentence and ordered his dishonorable discharge duly executed.

15. On 21 October 1988, he was discharged pursuant to his court-martial sentence under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial, other. His service was characterized as dishonorable. He completed 2 years, 3 months, and 17 days of net active service with lost time from 24 June 1987 through 7 July 1987 and 1 September 1987 through 29 April 1988.

16. The applicant provided a County Recovery House After Care Program Certificate of Completion, 7 January 2008, showing he successfully completed an addiction treatment program.

17. On 16 September 2021 in Docket Number AR20190007615, the ABCMR considered the applicant's request for an upgrade of his service characterization. After careful consideration, the Board determined his service characterization was neither in error nor unjust. Accordingly, his request for relief was denied.

18. The applicant provided a death certificate showing his mother died 2 December 2021 at age 77 as a result of acute respiratory failure. She was widowed at the time of her death.

19. The applicant provided three letters of support, 20 June 2019 and 28 February 2023 (two), attesting to his character as being a committed and active member of the recovery community for 12 years; describing him being honorable, hardworking, respectable, and helping people turn their lives around through recovery; and describing his work ethic as arriving early and being motivated, dedicated, and thorough.

20. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his dishonorable discharge to at least general under honorable conditions. The applicant selected PTSD as related to his request.

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 30 April 1985.
- On 18 June 1987, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully possessing an unauthorized military identification card on or about 28 May 1987.
- On 1 October 1987 before a general court-martial at Fort Carson, CO, the applicant was found guilty of:
 - one specification of AWOL from on or about 24 June 1987 until 8 July 1987
 - one specification of wrongful distribution of .6 grams, more or less, of cocaine, on or about 8 June 1987
 - one specification of operating a vehicle while drunk on or about 15 August 1987
- On 21 October 1988, he was discharged pursuant to his court-martial sentence under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 3-10, as a result of court-martial, other. His service was characterized as dishonorable.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, County Recovery House After Care Program Certificate, three letters of support, death certificate showing his mother died on 2 December 2021, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he is still sober after the death of his parents and has been working with convicts and veterans for nearly 17 years. He notes post-traumatic stress disorder (PTSD) as a related condition to the circumstances that resulted in his separation; however, he did not elaborate or indicate any traumatic incident while in service prior to his misconduct.

e. Due to the period of service, no active-duty electronic medical records were available for review. No VA electronic medical record was available for review and the applicant is not service connected. No medical documentation of any behavioral health

condition/diagnosis was evidenced in the record and the applicant did not submit any documentation indicating a behavioral health condition or diagnosis.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis that mitigates his misconduct.

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 a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant selected PTSD on his application.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD, the applicant did not submit any medical documentation substantiating his claim. Regardless of medical documentation, it is unlikely a BH condition would mitigate his wrongful distribution of cocaine.

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 military record, and regulatory guidance. The Board considered the frequency and nature of the misconduct, reason for separation and whether to apply clemency. The Board considered the applicant's reference to PTSD; however, documentation available for review, does not reveal a determination of PTSD or other behavioral health conditions which could be considered as mitigating. Based on the documentation available for review, the Board found sufficient evidence of mitigating factors for a portion of the misconduct. However, actions such as presenting fraudulent documentation reflects willful intent to deceive and cannot be considered a mitigating factor. After due consideration of the request, the Board found that the character of service the applicant received upon separation was not in error or unjust and a recommendation for relief is not warranted.

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 determined 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 by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190007615 on 16 September 2021.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. 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. A Soldier would be given a dishonorable or a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence had been ordered duly executed.

2. Title 10, U.S. Code, section 1552(f), provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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; 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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//