

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007302

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- letter, ██████████ Physicians, dated 10 April 2023

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 AR1999015463 on 4 February 1999.
2. As a new argument, the applicant states, post-traumatic stress disorder (PTSD) should have been a mitigating factor for the in-service behavior which led to his discharge.
3. The applicant enlisted in the Regular Army on 30 May 1979 for a 3-year period. Upon the completion of his initial entry training, he was awarded military occupational specialty 64C (Motor Transport Operator). The highest rank he attained was private first class/E-3.
4. The applicant's record contains Summary Court-Martial Order Number 11, issued by Headquarters, Law Enforcement Command (Provisional), Fort Polk, LA, dated 22 August 1980, which was rescinded by Summary Court-Martial Order Number 19, dated 12 September 1980.
5. Summary Court-Martial Order Number 19, issued by Headquarters, Law Enforcement Command (Provisional), Fort Polk, LA, dated 12 September 1980, shows the applicant pled guilty to and was found guilty of stealing gasoline from a military M151 jeep, the property of the U.S. Army, on or about 25 July 1980. He was sentenced to reduction to private/E-1, forfeiture of one half of his pay for one month, and hard labor

without confinement for 90 days. The sentence was adjudged on 22 August 1980. The portion that exceeded reduction to private/E-1 was set aside, and the findings of guilty were approved on 12 September 1980.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 19 October 1981 for failure to go at the time prescribed to his appointment place of duty and for willfully disobeying a lawful order from his superior noncommissioned officer, on or about 10 October 1981. His punishment consisted of forfeiture of \$140.00 pay for one month, 14 days of extra duty, and 14 days of restriction.

7. The applicant's record is void of the complete facts and circumstances surrounding his discharge processing. However, he was discharged on 8 February 1982, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge – conduct triable by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code JFS and reenlistment code RE-3. He was credited with 2 years, 8 months, and 9 days of net active service. He was authorized or awarded the Army Service Ribbon and Air Assault Badge.

8. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his UOTHC characterization of service on or about 21 September 1984. After careful consideration, the Board determined the applicant's discharge was proper and equitable. His request for relief was denied.

9. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC characterization of service on 4 February 1999. After careful consideration, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. His request for relief was denied.

10. The applicant provides a letter from ██████████, dated 10 April 2023, wherein Dr. ██████████, states the applicant is a patient under his care. He has been diagnosed with PTSD and is pursuing active treatment.

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

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

### 13. MEDICAL REVIEW:

a. The applicant requests reconsideration of his previous request to upgrade his UOTHC discharge to 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 30 May 1979; 2) Summary Court-Martial Order Number 19, issued by Headquarters, Law Enforcement Command (Provisional), Fort Polk, LA, dated 12 September 1980, shows the applicant pled guilty to and was found guilty of stealing gasoline from a military M151 jeep, the property of the U.S. Army, on or about 25 July 1980; 3) The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 19 October 1981 for failure to go at the time prescribed to his appointment place of duty and for willfully disobeying a lawful order from his superior noncommissioned officer, on or about 10 October 1981; 4) The applicant's record is void of the complete facts and circumstances surrounding his discharge processing. However, he was discharged on 8 February 1982, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge – conduct triable by court-martial.

c. The VA electronic medical record (JLV), ROP, and casefiles 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 from a provider from ██████████, dated 10 April 2023, wherein the provider states the applicant is under his care for and has been diagnosed with PTSD. The letter in no way associates the diagnosis with military service and no medical treatment records were included for review. A review of JLV was void of any treatment history for the applicant and he does not have a service-connected disability.

d. The applicant is requesting reconsideration of his previous request to upgrade his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records was void of any BH diagnosis or treatment for the applicant during service. The applicant provided a letter for ██████████ stating the applicant is currently receiving care for PTSD, however, the letter did not associate the PTSD diagnosis with military service and no treatment records were provided for review. In absence of documentation supporting his assertion that his misconduct was related to PTSD, that was present during service, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade of his discharge based on medical mitigation.

e. Alternatively, if one takes as fact the applicant met criteria for PTSD, misconduct characterized by stealing gasoline would not be mitigated by the disorder as theft is not a natural sequela of PTSD. Misconduct characterized by FTR and disobeying a lawful

order - that appears associated with the FTR (i.e., applicant did not report to remedial PT as directed) would be mitigated given the association between PTSD and avoidance and PTSD with problems with authority figure. Again, as previously stated, there is insufficient evidence to support the applicant had PTSD during his time in service.

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 time in service that would mitigate his misconduct. 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 contends 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 of the records was void of any BH diagnosis or treatment for the applicant during service. The applicant provided a letter for [REDACTED] stating the applicant is currently receiving care for PTSD, however, the letter did not associate the PTSD diagnosis with military service and no treatment records were provided for review. In absence of documentation supporting his assertion that his misconduct was related to PTSD that was present during service, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade of his discharge based on medical mitigation.

g. Alternatively, if one takes as fact the applicant met criteria for PTSD misconduct characterized by stealing gasoline would not be mitigated by the disorder as theft is not normal sequela of PTSD. Misconduct characterized by FTR and disobeying a lawful order that appears associated with the FTR (i.e., applicant did not report to remedial PT as directed) would be mitigated given the association between PTSD and avoidance and PTSD with problems with authority figure. Again, as previously stated, there is insufficient evidence to support the applicant had PTSD during his time in service.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, as well as the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/14/2024

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CHAIRPERSON

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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 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.
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 regulation provides that 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.
3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. 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.
  - b. 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.
  - c. 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.

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 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 post-traumatic stress disorder; 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.

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, 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.

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//