

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007579

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to a more favorable characterization.

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), 29 March 2023
- Army Achievement Medal, 13 December 1985
- Certificates of Completion from 13 May 1983 to 24 March 2023

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, in effect, an upgrade of his characterization of service is requested. He notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 13 May 1980 and was honorably discharged on 9 May 1983. He reenlisted in the Regular Army on 28 February 1985, for a period of 3 years. He subsequently extended on 2 May 1985 for an additional four months to meet the service requirement for an overseas assignment.
4. He was awarded the military occupational specialty of 94B (Food Service Specialist) and the highest rank he attained was specialist four/E-4.
5. On 9 January 1987, the applicant acknowledged his commander's notification of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). The commander noted the specific allegations on which the proposed action was based on, were the applicant's commission of a serious offense – distribution of hashish, blatant disregard for the rules and regulations of the U.S. Army,

and possession of a controlled substance. The applicant acknowledged receipt on the same date.

6. The applicant consulted with counsel on 15 January 1987 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration, a personal appearance, and representation by counsel before an administrative separation board. He elected not to submit a statement in his own behalf. Additionally, he understood he may encounter prejudice in civilian life.

7. On 16 January 1987, the applicant's immediate and intermediate commander formally recommended separation under AR 635-200, paragraph 14-12c, commission of a serious offense, with an UOTHC discharge.

8. An Administrative Elimination Board convened on 2 April 1987, and carefully considered the evidence. The board found by a preponderance of the evidence the applicant committed a serious offense. It recommended in view of the findings that the applicant be discharged from military service because of misconduct and issued an UOTHC discharge.

9. On 5 May 1987, the separation authority approved the board's findings and the recommended separation under the provisions of AR 635-200, paragraph 14-12c, for misconduct – abuse of illegal drugs, and further directed an UOTHC discharge be furnished.

10. The applicant was discharged on 18 May 1987 under the provisions of AR 635-200, Chapter 14-12c, by reason of misconduct-drug abuse, in the grade of E-1. His service was characterized as UOTHC. He received a separation code of "JKK" and a reentry code of "RE 3, 3C". He completed 2 years, 2 months, and 21 days of net active service. He had 2 years, 11 months, and 27 days of prior active service. He was awarded or authorized the following decorations, medal, badges, citations and campaign ribbons:

- Army Service Ribbon
- Overseas Service Ribbon (2d Award)
- Army Achievement Medal
- Expert Badge with M16 Rifle Bar
- Expert Badge with Hand Grenade Bar

11. The applicant provides, 18 certificates ranging from certificates of completion, achievement, perfect attendance, and various course completion certificates.

12. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an UOTHC characterization of service is

normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

#### MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced PTSD that mitigated his misconduct.

2. 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 in the Regular Army on 13 May 1980; 2) On 9 January 1987, the applicant acknowledged his commander's notification of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). The commander noted the specific allegations on which the proposed action was based on, were the applicant's commission of a serious offense – distribution of hashish, blatant disregard for the rules and regulations of the U.S. Army, and possession of a controlled substance; 3) An Administrative Elimination Board convened on 2 April 1987. The board found the applicant committed a serious offense; 4) The applicant was discharged on 18 May 1987, Chapter 14-12c, by reason of misconduct-drug abuse, in the grade of E-1. His service was characterized as UOTHC.

3. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The VA's Joint Legacy Viewer (JLV) were also examined. No additional medical documentation was provided.

4. On his application, the applicant noted PTSD was a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service. A review of JLV provided evidence the applicant has been engaged in behavioral health care and diagnosed with various mental health and substance abuse conditions, but he has not been diagnosed with a service-connected mental health condition, including PTSD. He also does not receive any service-connected disability for a mental health condition.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

## 6. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct.

b. Did the condition exist, or experience occur during military service? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct while on active service.

c. Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report that the applicant was experiencing PTSD while on active service. In addition, there is no nexus between PTSD and the applicant's misconduct of possession and distribution of hashish in that: 1) this type of misconduct is not part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

**BOARD DISCUSSION:**

1. The Board reviewed the applicant's request to upgrade his under other than honorable conditions character of service, his supporting documents, his statement, the evidence in the records, the ARBA Behavioral Health Advisor opinion, and the various published Department of Defense guidance for consideration of discharge upgrade requests based upon liberal consideration or clemency.

2. The Board determined relief was not warranted, after considering the ARBA Behavioral Health Advisor opinion that "... there is no nexus between PTSD and the applicant's misconduct of possession and distribution of hashish in that: 1) this type of misconduct is not part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right."

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	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.

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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. 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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 states 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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge UOTHC was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.
3. 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.

4. 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.

5. 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//