

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230007750

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, a personal appearance before the Board, and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), to show:

- Item 1 (Name) - change his last from [REDACTED]
- Item 4a (Grade, Rate, or Rank) and item 4b (pay grade) - restore rank/grade to specialist/E-4
- Item 13 (Decorations, Medals, Badges...) - add Air Assault Badge
- Item 14 (Military Education) - add Air Assault training

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 8 June 1992
- three letters from the Department of Veterans Affairs (VA), dated 14 June 2022 and 23 April 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he served his 4-year term of service honorably, without malice or ill will. He served with good conduct and served eight months in Desert Storm. He has a 100 percent (%) service connected disability rating, and his period of service was deemed honorable for VA purposes. The applicant notes post-traumatic stress disorder (PTSD) as a condition related to his request.

3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri. According

to the response received from NARA, his record is currently signed out and is unavailable for review at this time. Despite the lack of his OMPF, the applicant provided a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of the applicant's petition.

4. The applicant enlisted in the Regular Army on 14 July 1988. After completing training, he was awarded military occupational specialty 63B (Light Wheel Vehicle Mechanic).

5. He was deployed to Southwest Asia from 28 September 1990 to 21 April 1991.

6. The applicant was discharged on 8 June 1992, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of court-martial, in the rank/grade of private/E-1. His DD Form 214 confirms his service was characterized as UOTHC, with separation code KFS and reentry code RE-3. He was credited with 3 years, 10 months, and 25 days of net active service.

a. Item 13 does not show he was awarded the Air Assault Badge. However, it does show he was awarded or authorized the following:

- Army Commendation Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Southwest Asia Service Medal with three bronze service stars
- Kuwait Liberation Medal
- Expert Marksmanship Qualification Badge with Rifle bar

b. Item 14 does not show he completed Air Assault training. However, it does show he completed the Light Wheel Vehicle Mechanic Course (13 weeks) which constitutes military education.

7. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army, voluntarily, willingly, and in writing, discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. No evidence to the contrary has been provided.

8. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the

absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.

9. The applicant provides three letters from the VA:

a. The letter dated 14 June 2022 provides the VA's determination of the applicant's eligibility for benefits. The VA's review of the applicant's record showed the applicant was in violation of the Uniform Code of Military Justice for the wrongful use of a controlled substance, between 9 February 1992 and 9 March 1992. A special court-martial was convened. The VA determined the available evidence did not indicate his discharge was under moral turpitude. Nor was there an established record of willful and persistent misconduct. The VA further determined, the applicant's period of service from 14 July 1988 through 8 June 1992 was honorable for VA purposes.

b. The two letters dated 23 April 2023 show he has a 100% service-connected disability rating and is eligible for Veterans hiring preference.

10. The applicant did not provide evidence showing he was awarded the Air Assault Badge. Nor did he provide evidence that his last name was legally changed during his period of active duty service.

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

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced PTSD, which mitigates his discharge.

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's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri was unavailable due to it being currently checked out. Despite the lack of his OMPF, the applicant provided a fully constituted DD Form 214 for the Board; 2) The applicant enlisted in the Regular Army on 14 July 1988; 3) He was deployed to Southwest Asia from 28 September 1990 to 21 April 1991; 4) The applicant was discharged on 8 June 1992, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as UOTHC

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy

Viewer (JLV) was also examined. The applicant also submitted military and VA health documentation for review.

d. On his application, the applicant noted PTSD was related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. There was insufficient evidence the applicant was diagnosed with PTSD or another mental health condition while on active service. A review of JLV provided evidence the applicant has engaged in the VA system of cars, and he was diagnosed with service-connected PTSD, and he receives service-connected disability for PTSD (100% disability).

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced a mental health condition or experience while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience.

2. The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. The applicant used the contested name during his entire period of service. The Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed. The applicant is advised that a copy of this decisional document, along with his application and the supporting evidence he provided, will be filed in his official military records. This should serve to clarify any questions or confusion regarding the difference in the name recorded in his military records and to satisfy his desire to have his legal name documented in his military records.

3. Additionally, the Board determined the applicant’s record is absent sufficient evidence to support that he successfully completed air assault training and was awarded an air assault badge. Furthermore, the Board determined the applicant was discharged under Chapter 10, for the good of the service – in lieu of court-martial, in the rank/grade of private/E-1, based on this the Board found insufficient evidence to support restoration of the applicant’s rank/grade to back to specialist/E-4. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

4. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

3/4/2024

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. Title 10, USC, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. 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 applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214.

a. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

b. Paragraph 2-4 provided instructions on the preparation of the DD Form 214. For item 14, the preparer was instructed to list the formal in-service (full-time attendance) training courses (at least 40 hours in duration) the separating Soldier successfully completed during the period of service covered by the DD Form 214. The preparer was instructed to include the course title, length in weeks, and year completed. This information is intended to assist the separating Soldier in job placement and counseling; therefore, courses involving combat skills were/are not listed.

5. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier is to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

6. 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.

7. 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//