

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230007948

APPLICANT REQUESTS: upgrade his under other than honorable conditions (UOTHC) discharge to honorable due to post-traumatic stress disorder (PTSD).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Letter from Veterans Health Care Team

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 indicates on his application that he suffers from PTSD and other mental health issues. He states on his application and self-authored letter:

a. He is asking for a review of his UOTHC discharge and an upgrade to honorable. He believes there should be an honorable discharge. He feels the correction should be made because at the time he was going through PTSD, which was worse when his wife left him. He informed his sergeant, at the time, who gave him leave, which the applicant signed. However, for some reason his leave form was never found, and it resulted in his unit reporting him absent without leave (AWOL). He was not AWOL.

b. He waited so long to apply to the Board because he just found out he was able to request a discharge upgrade. He asked the Board to help. He has completed his network engineer degree and cyber tech through the VRAP program. He loved being in the Army and serving his country. He had just reenlisted in the Army, why would he go AWOL? He had permission and emergency leave from his sergeant and his captain signed the form as well. For some reason, his unit lost the paperwork, and he was in so much pain from his wife leaving him.

c. The applicant gladly took the leave, but it cost him everything. He trusted his sergeant and captain to lead him and guide him, but they failed him. Now, the applicant's life has not been great at all. To this day, the applicant has PTSD but with his discharge status, he cannot get help.

3. The applicant provides a letter from Central Texas Health Care System, dated 25 September 2023, which states the applicant receives care from the Central Texas Department of Veterans Affairs for treatment of anxiety.

4. The applicant's service record contains the following documents:

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) show the applicant entered active duty on 3 October 1995 and reenlisted in the Army on 24 August 1998.

b. DA Forms 4187 (Personnel Action) changed the applicant's duty status on:

- 15 March 1999 from present for duty to AWOL
- 6 April 1999 from AWOL to dropped from rolls (DFR)

c. DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), dated 6 April 1999 reports the applicant as a deserter and details his personal information.

d. DD Form 616 (Report of Return of Absentee) shows the applicant went AWOL on 15 March 1999 and was apprehended by civil authorities. He was returned to military control on 11 April 2000.

e. DA Form 4187-E shows the applicant duty status was changed from DFR to returned to military control effective 11 April 2000.

f. DD Form 458 (Charge Sheet) dated 19 April 2000 shows the applicant's commander preferred one court-martial charge of AWOL from on or about 15 March 1999 to on or about 11 April 2000 against the applicant.

g. On 21 April 2000, the applicant voluntarily requested discharge in lieu of court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) chapter 10. He was making the request of his own free will and had not been subjected to coercion. By submitting the request for discharge, he acknowledged he understood the elements of the offense charged and was guilty of the charge against him. The applicant had been afforded the opportunity to consult with appointed counsel for consultation. He understood if his request was accepted he could be discharged UOTHC and the possible effects of an UOTHC discharge. The applicant declined to submit statements on his own behalf.

h. The applicant's chain of command recommended the applicant's request for discharge be approved and that he be issued an UOTHC discharge. On 8 September 2000, the appropriate approval authority approved the applicant's request for discharge and directed he be issued an UOTHC discharge.

i. On 27 September 2000, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service (Separation Code KFS, Reentry Code 4).

- He completed 3 years, 10 months, and 22 days of net active service and he had lost time from 15 March 1999 through 10 April 2000.
- The Remarks block did not list his continuous honorable service and indicated he did not complete his first term of service.

j. The applicant's service record is void of a leave form or documentation showing he was on approved leave.

5. Based on the applicant's assertion he suffered from PTSD and other mental health issues, the ARBA Medical Section provided a medical review for the Board's consideration

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Under Other Than Honorable Conditions (UOTHC) discharge to honorable.

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 RA on 3 October 1995 and reenlisted on 24 August 1998.
- DD Form 616 (Report of Return of Absentee) shows the applicant went AWOL on 15 March 1999 and was apprehended by civil authorities. He was returned to military control on 11 April 2000.
- DD Form 458 (Charge Sheet) dated 19 April 2000 shows the applicant's commander preferred one charge of AWOL from on or about 15 March 1999 to on or about 11 April 2000 against the applicant.
- On 21 April 2000, the applicant voluntarily requested discharge in lieu of court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) chapter 10. He was making the request of his own free will and had not been subjected to coercion. By submitting the request for discharge, he acknowledged he understood the

elements of the offense charged and was guilty of the charge against him. The applicant had been afforded the opportunity to consult with appointed counsel for consultation. He understood if his request was accepted he could be discharged UOTHC and the possible effects of an UOTHC discharge. The applicant declined to submit statements on his own behalf.

- On 27 September 2000, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 10 months, and 22 days of net active service. He was awarded the Army Service Ribbon. He was discharged in lieu of court-martial, received an UOTHC discharge with a separation code of KFS and a reentry code of RE-4.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, self-authored letter, and letter from medical provider, 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 indicates on his application that he suffers from PTSD and other mental health issues. He is asking for a review of his UOTHC discharge and an upgrade to honorable. He believes there should be an honorable discharge. The applicant believes the correction should be made because, at the time, he was going through PTSD, which was worse when his wife left him. He informed his sergeant, at the time, who gave him leave, which the applicant signed. However, for some reason his leave form was never found and it resulted in his unit reporting him absent without leave (AWOL). He was not AWOL. He claims he had permission and emergency leave from his sergeant and his captain signed the form as well. For some reason, his unit lost the paperwork, and he was in so much pain from his wife leaving him. The applicant gladly took the leave, but it cost him everything. He trusted his sergeant and captain to lead him and guide him, but they failed him. Now, the applicant's life has not been great at all. To this day, the applicant has PTSD but with his discharge status, he cannot get help.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from his time of service evidencing a behavioral health condition. Contrary to the applicant's report, he was AWOL for 393 days and was apprehended by civilian authorities, he did not return of his own accord. The applicant's service record is void of a leave form or documentation showing he was on approved leave. In addition, in the applicant's request for discharge in-lieu of trial by court-martial, dated 11 August 2000, it states "soldier has become disillusioned with the military" as his reason for AWOL.

f. VA electronic medical records available for review indicate the applicant is 10% service connected for tinnitus. The applicant's available record indicates he sought

support from the VA starting in July 2017, primarily due to housing and financial issues. The applicant claims to have PTSD, however, the record does not support his contention and indicates he has been treated for symptoms of anxiety and disrupted sleep related to current psychosocial stressors, including housing insecurity and unemployment. The applicant provides a letter from Central Texas Health Care System, dated 25 September 2023, from a pharmacist. The letter was provided to allow the applicant to take time off from work to receive care and indicates the applicant is treated for anxiety. The applicant's diagnosis in the VA treatment record is Adjustment Disorder and Substance Use, with his symptoms of anxiety related to his Adjustment Disorder.

g. 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 or diagnosis that mitigates his misconduct. However, Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

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 self-asserts PTSD and other mental health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any 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 available medical documentation does not substantiate the diagnosis. The applicant claims to have PTSD but does not indicate an index trauma that would have precipitated PTSD. The VA record indicates the applicant has been treated for anxiety and disrupted sleep, related to psychosocial stressors not to his military service. After review of all available information, the applicant's diagnosed with an Adjustment Disorder and the VA has not service connected him for any BH conditions. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. Applicant's Adjustment Disorder does not provide mitigation for the misconduct that led to his separation.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (AWOL). 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 advising official. The Board concurred with the medical reviewer'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.

b. The Board did note however that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 to show in the Remarks Block:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 1995-10-03 to 1998-08-23

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.



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 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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 will decide cases based on the evidence of record. It is not an investigative agency.

3. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

4. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

5. 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.

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 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 (TBI); 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. 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.

7. 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.

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.

8. Title 10, U.S. Code, section 1556 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//