

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008028

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions characterization of service
- a personal appearance before the Board via video/telephone

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

DD Form 149 (Application for Correction of Military Record)

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 he made mistakes as a young Soldier. He feels he was treated badly and unfairly. He deployed to Operation Iraqi Freedom (OIF); however, this is not reflected on his DD Form 214 (Certificate of Release or Discharge from Active Duty) or his Enlisted Record Brief (ERB). He is unable to receive disability and treatment for post-traumatic stress disorder (PTSD).
3. The applicant enlisted in the Regular Army on 3 April 2002. He completed his required training and was assigned to Fort Hood, TX.
4. The applicant was promoted to private (PV2)/E-2 on 3 October 2002.
5. The evidence of record indicates the applicant was reduced in rank/grade of private (PV1)/E-1 on 8 September 2003. The specific reason for the reduction is unknown.
6. A DD Form 458 (Charge Sheet), dated 3 December 2003, shows the following charges preferred against the applicant:
 - 15 August 2003, without authority, go from his appointed place of duty
 - 15 August 2003, willfully disobey an order

- 3 September 2003, fail to obey a general regulation
- 19 September 2003, without authority, go from his appointed place of duty
- 19 September 2003, willfully disobey an order
- 21 September 2003, without authority, fail to go to his appointed place of duty
- 3 October 2003, without authority, fail to go to his appointed place of duty
- 3 October 2003, tendering a falsified DD Form 689 (Individual Sick Slip)
- 24 October 2003 to 27 October 2003, absent without authority (AWOL)
- 31 October 2003 to 12 November 2003, AWOL
- 18 November 2003, without authority, fail to go to his appointed place of duty
- 21 November to 25 November, AWOL

7. On 18 December 2003, after the applicant consulted with counsel and was advised of the court-martial charges, the applicant submitted a request for discharge in lieu of trial by Court-Martial, acknowledging the charges preferred against him authorizes the imposition of a bad conduct or dishonorable discharge and his is guilty of one of more of the charges against him. He acknowledged the following:

- he did not desire further rehabilitation or military service
- he was afforded the opportunity to consult with counsel
- he understood the impact of this discharge on his Veterans Administration benefits
- he did not submit statements on his behalf

8. A memorandum, subjected: Establishment of Provisional Unites and Jurisdictional Scheme - III Corps Units and Personnel Remaining at Fort Hood During Operational Iraqi Freedom 2, dated 19 December 2003, shows the applicant's unit, 36th Medical Evacuation Battalion, would remain at Fort Hood instead of deploying to Iraq.

9. The applicant's request for discharge in lieu of trial by Court-Martial was approved on 5 February 2004.

10. The applicant was discharged on 1 March 2004. His DD Form 214 does not document any personal decorations, but it does include the following entries:

- blocks 4a (Grade, Rate, or Rank) and 4b. (Pay Grade) - PV1/E-1
- block 12h (Effective date of Pay Grade) - 2003 09 08
- block 24 (Character of Service) - Under Other than Honorable Conditions
- block 25 (Separation Authority) - Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10
- block 26 (Separation Code) - KFS
- block 27 (Reentry Code) - 4
- block 28 (Narrative Reason for Separation) - In Lieu of Trial by Court-Martial

11. The applicant petitioned the ABCMR on 10 August 2016, requesting correction of his DD Form 214 to show he was deployed in support of OIF from February 2003 to October 2003 and associated medals. His case was adjudicated on 29 August 2018. The Board determined there was insufficient evidence showing he deployed in support of OIF, however, was entitled to the Global War on Terrorism Service Medal. A DD Form 215 (Correction to DD Form 214) was issued on 24 October 2018.

12. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to general or honorable. The applicant asserts PTSD mitigates his discharge.

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 April 2002.
- A DD Form 458 (Charge Sheet), dated 3 December 2003, shows the following charges preferred against the applicant:
 - 15 August 2003, without authority, go from his appointed place of duty
 - 15 August 2003, willfully disobey an order
 - 3 September 2003, fail to obey a general regulation
 - 19 September 2003, without authority, go from his appointed place of duty
 - 19 September 2003, willfully disobey an order
 - 21 September 2003, without authority, fail to go to his appointed place of duty
 - 3 October 2003, without authority, fail to go to his appointed place of duty
 - 3 October 2003, tendering a falsified DD Form 689 (Individual Sick Slip)
 - 24 October 2003 to 27 October 2003, absent without authority (AWOL)
 - 31 October 2003 to 12 November 2003, AWOL
 - 18 November 2003, without authority, fail to go to his appointed place of duty
 - 21 November to 25 November, AWOL
- On 18 December 2003, the applicant submitted a request for discharge in lieu of trial by court-martial, acknowledging the charges preferred against him authorizes the imposition of a bad conduct or dishonorable discharge and is guilty of one or more of the charges against him.
- Applicant was discharged on 1 March 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial with a characterization of service of under other than honorable conditions.
- Applicant petitioned the ABCMR on 10 August 2016, requesting correction of his DD Form 214 to show he was deployed in support of OIF from February 2003 to October 2003 and associated medals. His case was adjudicated on 29 August

2018. The Board determined there was insufficient evidence showing he deployed in support of OIF, however, was entitled to the Global War on Terrorism Service Medal. A DD Form 215 (Correction to DD Form 214) was issued on 24 October 2018.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, 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 made mistakes as a young Soldier. He feels he was treated badly and unfairly. He deployed to Operation Iraqi Freedom (OIF); however, this is not reflected on his DD Form 214 (Certificate of Release or Discharge from Active Duty) or his Enlisted Record Brief (ERB). He is unable to receive disability and treatment for post-traumatic stress disorder (PTSD).

e. No active-duty electronic medical records were available for review. However, hardcopy documentation from his time in service evidences an Enlisted Record Brief dated 27 February 2004 indicating his PULHES as "111111". In addition, a memorandum dated 19 December 2003 of Units and Personnel Remaining at Fort Hood During Operational Iraqi Freedom appears to indicate the applicant did not deploy. Applicant is not service connected and a VA Rating Decision dated 24 October 2016 denied service connection for PTSD for treatment purposes "because the records show that there is not any permanent residual disability associated this claimed condition that either occurred in or was caused by service". A VA Rating Decision dated 14 August 2017 denied service connection once again for PTSD as well as for anxiety, depression, and panic attacks; "because the records show no permanent residual disability associated with this claimed condition that either occurred in or was caused by service". The applicant initiated services with the VA in February 2017, due to end stage renal disease. In a BH encounter, on 19 April 2017, the applicant self-reported PTSD but no prior psychiatric history was noted, and the record did not appear to support a history of PTSD. He presented again on 14 February 2018, requesting PTSD treatment and was enrolled in Cognitive Processing Therapy (CPT) group therapy but his treatment was discontinued due to nonadherence and no shows. The applicant once again presented to a BH intake and reported increased anxiety and depression due to worsening health. He continued to be diagnosed with end stage renal disease on dialysis, due to hypertension, and had engaged in dialysis for the past ten years. The applicant shared that he was non-compliant with dialysis treatment which resulted in additional medical complications. He reported difficulty adjusting to his health conditions and had not taken the steps necessary to prioritize his health. He shared not exercising, smoking cigarettes and marijuana daily and was described as overweight.

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 diagnosis during military service 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 self-asserts PTSD.

(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. The VA electronic medical record indicates the applicant's behavioral health concerns appear to be related to his medical condition of end stage renal disease, which was neither caused nor aggravated by his military service.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 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. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. 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 advisory opinion finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided no 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.

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.

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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 (Personnel Separations - Enlisted Personnel) 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. Paragraph 3-7a. 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.

b. Paragraph 3-7b.(1). 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 10 (Discharge in Lieu of Trial by Court-Martial) states a soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the manual for courts-martial (MCM) 1998 includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

//NOTHING FOLLOWS//