

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008495

APPLICANT REQUESTS:

- An upgrade from an under other than honorable conditions (UOTHC) to a general discharge due to his disability of post-traumatic stress disorder (PTSD).
- A personal/video teleconference before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- DD Form 214 (Report of Separation from Active Duty) for the period ending 18 September 1978
- Department of Veterans Affairs letter, 24 October 2023
- Medical Documents

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:

a. At the time of the event, around March 1978, he just completed his military occupational specialty (MOS) of 95B (Military Police). He was standing in line waiting to turn his service revolver in, when another Soldier also was in line to turn in his revolver in, turned and pointing his gun in the applicant's face and pull the trigger. His gun was not loaded, but the applicant reacted and his weapon was loaded and he pulled the trigger out of fear. It was a natural reaction to what he had done. He was then reprimanded by other Soldiers and his weapon was taken from him. He was demoted from his MOS to kitchen duty and motor pool.

b. From that point on, he was never the same. He was given a court martial but was traumatized because of the event and was never given a chance to appeal. He left the military believing that he had a bad discharge and he never pursued it until he was informed that he could do something about it. He never did anything wrong to receive a bad discharge. He was only defending himself at the time and it affected him mentally ever since.

3. He provides a letter from the VA, dated 24 October 2023, which reflects that the applicant was granted a service-connected disability for PTSD.

4. The applicant's service records shows the following information:

a. DD Form 4 (Enlistment/Reenlistment Document) shows he enlisted in the Regular Army on 2 September 1977.

b. On 28 February 1978, he received an Article 15 in the rank of PV2/E-2, for failing to go to his appointed place of duty on 24 February 1978, to wit: 41th Military Police Company formation. He was found guilty and sentenced to 7 days of extra duty. He did not appeal.

c. On 17 May 1978, he received an Article 15, in the rank of PV2/E-2 for carelessly discharging a weapon, a .45 caliber pistol, in the rear of Building 21020 on 14 May 1978. He was found guilty and sentenced to forfeiture of pay of \$50.00 and extra duty and restriction for 14 days. He did not appeal.

d. On 10 July 1978, court-martial charges were preferred against the applicant for:

- Charge I: two specifications of larceny. For stealing the property of another Soldier, a value of \$23.00 and for stealing the property of another Soldier, a value of \$229.00, while on a military installation
- Charge II: unlawfully entering the room of other Soldiers, with intent to commit a criminal offense, to wit: larceny on a military installation

e. On 27 July 1978, the applicant submitted a voluntary request for a discharge for the good of the service in lieu of trial by court-martial. He understood the following:

- He had the right to consult with counsel and consulted with counsel who advised him of all his rights under the UCMJ and the elements for which he is being charged
- He was making this request of his own free will and was not been subjected to any coercion whatsoever by any person
- He has been advised of the implications that are attached to his request

- By submitting this request for discharge, he acknowledged that he is guilty of the charges against him or of any lesser included offenses therein which could authorized him a bad conduct discharge or a dishonorable discharge
- He, under no circumstances desires further rehabilitation
- He understood that if his request for discharge is accepted, that he may be furnished a discharge certificate for UOTHC and the effects of that discharge
- That will be deprived of many or all Army benefits and that he may be ineligible for many benefits by the Department of Veterans Affairs, and as a Veteran under both Federal and State law

f. On 8 August 1978, his command made a recommendation to disapprove the applicant's request for discharge in lieu of trial by court-martial due to the nature of his MOS and the charges.

g. On 29 August 1978, the separation authority and approved the applicant's request to be discharged in lieu of a trial by court-martial and that he be issued a UOTHC discharge and to be reduced to E-1.

h. In a Statement of Medical Condition, dated 18 September 1978, the applicant acknowledged that there has been no change in his medical conditions.

i. DD Form 214 shows he was discharged on 18 September 1978 with a character of service of UOTHC discharge, pursuant to Army Regulation 635-200, Chapter 10, with a SPD code of "JFS" and a reenlistment code of "RE-3". He completed 1 year and 6 days of net active service this period and 11 days of prior inactive service. His MOS is listed as "95B10 Military Policeman".

6. The applicant states he had a mental health issues, which will be address by the Behavioral Health Staff at the Army Review Boards Agency.

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 18 September 1978 under other than honorable conditions discharge and, in essence, a

referral to the Disability Evaluation System (DES). On his DD 149, he indicates that PTSD is an issue related to his request. He states in his self-authored letter:

“1978 around March of that year I had just completed my duty. My MOS was 95B10 military police. I was standing in line waiting to turn [in] my service revolver when PFC M. also was in line to turn [in] his revolver. He then turned and pointing his gun in my face and pulled the trigger. His gun was not loaded but I reacted and mine was and pulled the trigger out of fear it was a reaction to what he had done.

I was then reprimanded by other soldiers and my weapon was taken from me. I was demoted from the military police to kitchen duty and motor pool.

From that point on I would have never been the same I was then put up on court martial because of other because of mentally I was not there anymore I was never given an opportunity to appeal the decision pertaining to my military career because of another person's ignorance. I came into the military they clean police record no drug history but I was given an administrative discharge.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 show he entered the regular Army on 13 September 1977 and was discharged under other than honorable conditions on 18 September 1978 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Discharge for the Good of the Service – Conduct Triable by Court Martial.

- The applicant received an Article 15 on 28 February 1978 for failure to repair.
- The applicant received a second Article 15 on 17 May 1978 for careless discharge of his M1911A1 .45 caliber pistol in the rear of building 21010 in violation of Article 134 of the UCMJ.
- On 10 July 1978, the applicant was charged with stealing a clock radio from a fellow Soldier, stealing a J.C. Penny compact stereo from another fellow Soldier, and entering the room of two other Soldiers “with intent to commit a criminal offense, to wit: larceny, therein.”
- The applicant was confined by military authorities for pretrial confinement on 10 July 1978 and released for trial on 14 July 1978.
- On 27 July 1978, the applicant voluntarily requested discharge for the good of the service under provisions in chapter 10 of AR 635-20. His request was approved by the Commanding General of III Corps and Fort Hood on 29 August 1978

d. His period of service predates AHLTA. JLV shows he was awarded a 0% VA service-connected disability rating for PTSD effective 20 October 2023.

e. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

f. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: 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. The applicant states his PTSD stressor was his errant discharge of his firearm which the record shows occurred in May 1978. He received his Article 15 for failure to repair in February 1978. PTSD does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right and therefore cannot mitigate his criminal acts of larceny and attempted larceny.

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.

a. The evidence shows the applicant was charged with commission of offenses (larceny and unlawfully entering a room) punishable under the UCMJ with a punitive discharge. He consulted with counsel and requested voluntary 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.

b. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence that the applicant had an experience or condition during his time in service 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.

c. The Board also agreed with the medical reviewer's finding that there is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System (DES). Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The Board determined that neither a discharge upgrade nor a referral of his case to the DES is warranted.

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. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, provides for the separation of enlisted personnel.
 - a. Chapter 3-7a (Honorable discharge) states an honorable discharge is a

separation with honor. 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. Chapter 3-7b (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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.

3. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means he or she has been exposed to an event that is considered traumatic.

a. Clinical experience with the PTSD diagnosis has shown there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified.

b. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from, and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

4. The Fifth Revision of DSM-5 was released in May 2013. This updated edition included changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms; the seventh assesses functioning;

and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

a. Criterion A, stressor: The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: (one required):

(1) Direct exposure.

(2) Witnessing, in person.

(3) Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.

(4) Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

b. Criterion B, intrusion symptoms: The traumatic event is persistently re-experienced in the following way(s): (one required):

- Recurrent, involuntary, and intrusive memories
- Traumatic nightmares
- Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness
- Intense or prolonged distress after exposure to traumatic reminders
- Marked physiologic reactivity after exposure to trauma-related stimuli

c. Criterion C, avoidance: Persistent effortful avoidance of distressing trauma-related stimuli after the event: (one required):

- Trauma-related thoughts or feelings
- Trauma-related external reminders (e.g., people, places, conversations, activities, objects, or situations)

d. Criterion D, negative alterations in cognitions and mood: Negative alterations in cognitions and mood that began or worsened after the traumatic event: (two required):

- Inability to recall key features of the traumatic event (usually dissociative amnesia; not due to head injury, alcohol, or drugs)

- Persistent (and often distorted) negative beliefs and expectations about oneself or the world (e.g., "I am bad," "The world is completely dangerous")
- Persistent distorted blame of self or others for causing the traumatic event or for resulting consequences
- Persistent negative trauma-related emotions (e.g., fear, horror, anger, guilt, or shame)
- Markedly diminished interest in (pre-traumatic) significant activities
- Feeling alienated from others (e.g., detachment or estrangement)
- Constricted affect: persistent inability to experience positive emotions

e. Criterion E, alterations in arousal and reactivity: Trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event: (two required):

- irritable or aggressive behavior
- self-destructive or reckless behavior
- hypervigilance
- exaggerated startle response
- problems in concentration
- sleep disturbance

f. Criterion F, duration: Persistence of symptoms (in Criteria B, C, D, and E) for more than one month.

g. Criterion G, functional significance: Significant symptom-related distress or functional impairment (e.g., social, occupational).

h. Criterion H, exclusion: Disturbance is not due to medication, substance.

5. In view of the foregoing, 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. 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 regarding equity, injustice or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence and BCMRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in discharge, which may be warranted on equity or relief from injustice grounds. The 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, an injustice, or clemency grounds, BCMRs shall consider the twelve stated principles in the guidance as well as eighteen individual factors related to the applicant.

8. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records) 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 ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//