

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008720

APPLICANT REQUESTS: reconsideration of his earlier requests to upgrade his under other than honorable conditions discharge to an honorable character of service, based on having incurred post-traumatic stress disorder (PTSD).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20160017883 on 21 December 2017 and AR20190012424 on 7 February 2020.

2. The applicant states, in effect, while deployed in support of Operations Desert Shield/Desert Storm, they medically evacuated him after he smashed his fingers, severing one of them; to this day, he still suffers from issues with his fingers.

a. Prior to returning to his unit at Fort Riley, KS, he received treatment at hospitals in Germany and Kentucky; at the time, he felt very fatigued, disoriented, and scared, so he decided to go home. By the time he got back to his unit, the leadership at Fort Riley had relieved his entire chain of command. The applicant states, "I fell thru (sic) the cracks for serving my country. It felt like I was in a dark space at that time of my life. My wife was pregnant and, eventually, I lost my marriage."

b. In item 13 (Are Any of the Following Issues/Conditions Related to your Request) of his application, the applicant has checked the block for "PTSD"; however, he provides no further explanation or supporting documentation.

3. A review of the applicant's service record reveals the following:

a. On 3 December 1987, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty

12B (Combat Engineer), orders assigned him to an engineer battalion in Germany, and he arrived at his new unit, on 28 March 1988. Effective 8 February 1990, his leadership promoted him to specialist (SPC)/E-4.

b. On 13 April 1990, the applicant immediately reenlisted for 3 years. On 29 June 1990, the applicant completed his tour in Germany, and orders reassigned him to an engineer battalion at Fort Riley; he arrived, on 17 August 1990.

c. On 25 December 1990, the applicant deployed to Southwest Asia; on or about 6 January 1991, the applicant's duty status changed from present for duty (PDY) to hospital. On or about 14 January 1991, medical authority evacuated the applicant, and he received treatment at Scott Air Force Base, IL; on 24 January 1991, the applicant's Fort Riley unit reported him as absent without leave (AWOL). On 21 March 1991, the applicant returned to military control at his Fort Riley unit.

d. The applicant's separation packet is unavailable for review; however, the applicant's service record includes his DD Form 214 (Certificate of Release or Discharge from Active Duty), which shows that, on 27 June 1991, the Army discharged him under other than honorable conditions. The DD Form 214 additionally reflects the following:

- Item 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1
- Item 12c (Record of Service – Net Active Service This Period) – 3 years and 5 months
- Item 12f (Foreign Service) – 2 years, 3 months, and 4 days (the length of his tour in Germany)
- Item 12h (Effective Date of Pay Grade) – 19910613
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon, National Defense Service Medal, Army Good Conduct Medal (1st Award), Overseas Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle and Grenade Bars
- Item 18 (Remarks) – Continuous Honorable Service from 19871203 to 19900412
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10 (Discharge for the Good of the Service)
- Item 28 (Narrative Reason for Separation) – "For the Good of the Service – In Lieu of Court-Martial"
- Item 29 (Dates of Time Lost During this Period) – 19910124 through 19910320 (56 days)

e. On 26 September 2016, the applicant petitioned the ABCMR, requesting an upgrade to honorable. He argued his service records inaccurately stated he was AWOL;

he instead had been hospitalized in Germany and Kentucky before going home on leave and then returning to his unit. He maintained the Board should refer to his medical records to validate his claims.

(1) On 21 December 2017, the Board voted to deny relief, stating, "(Applicant) was medically evacuated to Scott AFB, IL, after an injury to his fingers and he received 29 days of convalescent leave. He was discharged from the hospital on 24 January 1991, apparently left Illinois without permission, and did not return to duty until 21 March 1991."

(2) The Board continued, "The applicant's contention that his medical records should document his hospital stay and absolve him of the AWOL charge was noted; however, his entire medical record is not available and the Board is not an investigative agency; the applicant has the burden of proving an error or injustice by a preponderance of the evidence."

f. On or about 26 July 2019, the applicant resubmitted his original petition and asked the Board to reconsider its prior denial of relief. He offered no new arguments or evidence to support his request. On 7 February 2020, the Board denied relief.

(1) The Board stated, "After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted."

(2) "Based upon the lack of corroborating evidence of the applicant's statement relating to the AWOL, the Board concluded there is insufficient evidence of an error or injustice which would warrant a change to the characterization of service."

4. The applicant now asks the Board to reconsider its prior decisions on his request to upgrade his under other than honorable conditions discharge.

a. The absence of the applicant's separation packet means we are unable to determine the full circumstances that led to his discharge; however, given the availability of the applicant's record copy DD Form 214, which lists the applicant's regulatory separation authority, the Board presumes the applicant's leadership completed his separation properly.

(1) AR 15-185 (ABCMR) states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an

error or injustice by presenting a preponderance of evidence, meaning there is a greater than a 50 percent chance that what an applicant's claims is true.

(2) This presumption notwithstanding, the version of the military personnel records regulation in effect at the time, AR 640-10 (Individual Military Personnel Records), required case files for approved separation actions to be maintained in the affected Soldiers' military personnel file.

5. Clemency guidance to the Boards for Correction of Military/Naval Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

6. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

7. MEDICAL REVIEW:

a. Applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149 and supporting documents, his ABCMR Record of Proceedings (ROP), and his separation military documentation.

b. Due to the period of service, there are no active duty electronic medical records available for review.

c. The applicant is not service connected and there are no VA medical records available for review.

d. The applicant did not submit any medical documentation for review.

e. After review of all available information, there is insufficient evidence to support the applicant's asserted PTSD since there is no medical documentation available for

review and the applicant did not submit any medical documentation. Without any medical evidence to support the asserted PTSD, there is no mitigation in this case.

Kurta Factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserted PTSD.

(2) Did the condition exist or experience occur during military service? No. While the applicant asserts having PTSD at the time of military service, there is no medical evidence to support that the applicant had PTSD during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence to support the applicant's asserted PTSD since there is no medical documentation available for review and the applicant did not submit any medical documentation. Without any medical evidence to support the asserted PTSD, there is no mitigation in this case.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20160017883 on 21 December 2017 and AR20190012424 on 7 February 2020.

6/27/2024

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 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. AR 635-200, in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when the Soldier's subsequent honest and faithful service over a greater period outweighed the disqualifying entries found in his/her record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge.

(1) Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision.

(2) The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

3. The Manual for Courts-Martial in effect at the time showed violations of Article 86 (AWOL for more than 30 days) included punitive discharges among its maximum punishments.

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated when a separation authority determined a Soldier was to be discharged from the Service under other than honorable conditions, the regulation required the separation authority to reduce that Soldier to the lowest enlisted grade. Board action was not required for this reduction.

5. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Active Army and RC enlistment program. Table 3-6 (Armed Forces RE Codes) included a list of the RE codes:

- RE-1 applied to Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria are met
- RE-3 applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but disqualification was waivable; they were ineligible unless a waiver is granted

6. AR 635-5-1 (SPD), in effect at the time, stated Soldiers separated under chapter 10, AR 635-200 received an SPD of "KFS."

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers. This cross reference table showed the SPD code and a corresponding RE code. The SPD code of "KFS" had a corresponding RE code of "3."

8. 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; 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 to 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.

9. 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, 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.

//NOTHING FOLLOWS//