

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008768

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions characterization of service, and an 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). 18 April 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150013178 on 25 August 2016.
2. The applicant states, in effect, he is requesting an upgrade of his discharge because he has changed and grown-up. He has post-traumatic stress disorder (PTSD) and lower back pain for disability. He had a slip disc and saw the medic and he was put back in field duty. He gave his life for this county and the U.S. Army. The applicant notes other mental health is related to his request.
3. The applicant enlisted in the Regular Army on 31 January 1980, for a 3-year period. He was awarded the military occupational specialty 94B (Food Supply Specialist).
4. On 10 April 1981, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to go to his appointed place of duty on or about 2 April 1981. His punishment was restriction for 14 days.
5. On 11 March 1982, he accepted NJP under the provisions of Article 15, UCMJ, for:
 - Violating a general regulation, by carrying in a concealed manner a locking blade knife with a blade longer than three inches, on or about 27 February 1982.
 - Unlawfully punching another Soldier in the head with a closed fist, on or about 27 February 1982.

- Committing an assault on another Soldier by cutting him on top of his head with a knife and did intentionally inflict grievous bodily harm upon the Soldier, a laceration, on or about 27 February 1982.
- His punishment was reduction to the grade of Private/E-1, forfeiture of \$275.00 pay per month for 2 months, extra duty and restriction for 45 days.

6. The applicant's official military personnel record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 8 November 1982, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. His service was characterized as under conditions other than honorable; he received separation code JFS and reentry code RE-3. He was credited with 2 years and 8 days of net active service.

7. On 23 April 2014, the ABCMR considered the applicant's request for an upgrade of his characterization of service. The Board denied his request stating the evidence presented did not demonstrate the existence of a probable error or injustice. The Board determined that the overall merits of the case were insufficient as a basis for the correction for his records.

8. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions characterization of service is normally considered appropriate.

9. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions characterization of service. 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 31 January 1980.
- On 10 April 1981, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to go to his appointed place of duty on or about 2 April 1981.
- On 11 March 1982, he accepted NJP under the provisions of Article 15, UCMJ, for:

- Violating a general regulation, by carrying in a concealed manner a locking blade knife with a blade longer than three inches, on or about 27 February 1982.
- Unlawfully punching another Soldier in the head with a closed fist, on or about 27 February 1982.
- Committing an assault on another Soldier by cutting him on top of his head with a knife and did intentionally inflict grievous bodily harm upon the Soldier, a laceration, on or about 27 February 1982.
- The applicant's official military personnel record is void of the complete facts and circumstances surrounding his discharge processing.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 8 November 1982, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. His service was characterized as under conditions other than honorable; he received separation code JFS and reentry code RE-3.
- On 23 April 2014, the ABCMR considered the applicant's request for an upgrade of his characterization of service. The Board denied his request stating the evidence presented did not demonstrate the existence of a probable error or injustice. The Board determined the overall merits of the case were insufficient as a basis for the correction for his records.

b. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. 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. The applicant states, in effect, he is requesting an upgrade of his discharge because he has changed and grown-up. He asserts post-traumatic stress disorder (PTSD) and lower back pain and is seeking disability. He reports having had a slip disc and saw a medic but he was put back in field duty. He states he gave his life for this country and the U.S. Army.

c. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit hardcopy medical documentation from his time in service. Limited VA electronic medical records were available for review and the applicant is not service connected. The VA record indicates he is eligible for humanitarian assistance and the applicant appears to have connected with the VA in July 2019 due to issues with homelessness. On 31 July 2019, he was admitted into the VA residential housing program and requested assistance with pursuing a discharge upgrade and VA service connection claim. The applicant was discharged from the program on 15 October 2019 due to multiple violations, including, two unauthorized absences and substance use relapses three times while in the program. The applicant continued to engage with the VA intermittently and he received ongoing support. A note

dated 12 January 2022, indicates the applicant's history of homelessness and continued problems related to social and economic circumstances. The record is void of evidence of any BH condition or diagnosis.

d. 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 that mitigates his misconduct. Regardless, it is unlikely any BH condition would mitigate his discharge due to the nature of his misconduct; assault by punching a soldier and intentionally inflicting grievous bodily harm upon another soldier, a laceration.

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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts PTSD however, he provides no documentation.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. 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-asserts PTSD, he did not provide any medical documentation substantiating the diagnoses and did not provide a rationale for his contention. However, regardless of a diagnosis, PTSD would not mitigate assault by punching a soldier and intentionally inflicting grievous bodily harm upon another soldier. Assault is not a natural sequela of this BH condition and would not mitigate the reason for his discharge. In addition, PTSD does not impact the ability to distinguish right from wrong and act in accordance with the right.

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's separation packet is not available for review. The available evidence shows the applicant was charged with commission of an offense punishable under the UCMJ

with a punitive discharge. He presumably 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 available separation. 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 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:

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 the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20150013178 on 25 August 2016.

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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. Section 1556 of Title 10, U.S. Code (USC), 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.
2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records.
 - a. States 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.
 - b. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - 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.
 - 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.

4. 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs, on 25 July 2018, 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 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 a discharge, which may be warranted on equity or relief from injustice grounds.

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//