

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008870

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions to honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Personal Statement, dated 30 December 1994
- Checklist for Administrative Discharge Actions, dated 6 February 1995
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Letter, dated 26 July 2022

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) Docket Number AR20180001240 on 4 June 2019.
2. The applicant states during his enlistment in the Army from 1992 to 1995 he suffered from and was later diagnosed with Tourette syndrome, attention deficit hyperactivity disorder, anxiety, and depression. He had a hard time adjusting to the military and made a lot of mistakes. He did not understand why he was different. During his enlistment he went absent without leave (AWOL) because he did not know what to do. He was diagnosed after his enlistment, but the symptoms occurred while he was on active duty and are annotated in his medical records. He is 100% service-connected disabled and currently being seen at the VA and in the community for treatment.
3. On 3 September 1992, the applicant enlisted in the Regular Army.
4. The applicant previously submitted medical records, which show in part:
  - a. A Standard Form 600 (Chronological Record of Medical Care), dated 29 March 1994, which shows the applicant claimed increasing memory loss, involuntary muscle twitching and overall uneasiness for 3 weeks. The applicant stated he had family

problems going on 8 months and his wife walked out on 1 January 1994. He felt his father was out to get him, he felt depressed, withdrawn, and had thoughts of suicidal tendencies in early January 1994.

b. A Standard Form 558 (Medical Record – Emergency Care and Treatment), dated 17 April 1994, which states the applicant claimed suicidal ideations and self-mutilated crosses on his left arm. Depressed pending divorce, drinking, and financial problems.

c. A Standard Form 513 (Medical Record – Consultation Sheet), dated 17 April 1994, which states the applicant was in the hospital for surgery on his spleen when he underwent an emergency bedside consultation. He stated he was going through a divorce and job stress and wanted to talk to someone. He had a history of carving crosses on his arm to relieve stress and denied suicidal/homicidal ideation at the present. He received a provisional diagnosis of suicidal ideation and adjustment disorder with depressed mood.

5. On 4 October 1994, the applicant's duty status changed from present for duty to AWOL. On 3 November 1994, he was dropped from the rolls.

6. On 26 December 1994, the applicant's duty status changed from dropped from the rolls to present for duty.

7. On 29 December 1994, the applicant signed a medical examination for separation statement of option and he elected to not undergo a medical examination.

8. Court-martial charges were preferred on the applicant on 4 January 1995. The relevant DD Form 458 (Charge Sheet) shows the applicant did on 4 October 1994, without authority absent himself from his unit and did remain so absent until on or about 26 December 1994.

9. On 30 December 1994, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge if this request is approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He elected to submit a statement on his own behalf. In his request, he acknowledged:

- he made the request of his own free will and have not been subjected to any coercion whatsoever by any person
- he was advised of the implications that are attached to it.

- by submitting the request for discharge, he acknowledges that he understood the elements of the offense(s) charged and he is guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge
- moreover, he stated that under no circumstances did he desire further rehabilitation, and had no desire to perform further military service

10. The applicant submitted a statement on his behalf that states: his military life changed a lot since his separation from his wife. He became an alcoholic and mentally unstable and saw counselors for both conditions. He also stated he had a hearing problem in his right ear, but the audiologist determined he was lying about his hearing trouble, so the audiologist pushed for nonjudicial punishment. The applicant knew that he could not hear and tried to fight it, but it was no use. He had eight hearing tests in his medical records that did not match up. He declined his physical examination because he knew he had the hearing problem when he joined the Army. He also had financial problems due to his separation from his spouse and his chain of command did not want to help him, so he went AWOL, which solved a lot of his problems. He held three different jobs while AWOL and had a better life outside of the Army.

11. On 30 December 1994, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Other Than Honorable Conditions Discharge Certificate.

12. On 13 February 1995, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge from the service under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an Under Other Than Honorable Conditions Discharge Certificate and the applicant's reduction to private/E-1.

13. The applicant was discharged from active duty on 10 March 1995 under the provisions of AR 635-200, Chapter 10, in lieu of court-martial, with the issuance of an under other than honorable conditions characterization of service. His DD Form 214 shows:

- a. He completed 2 years, 3 months, and 16 days of active service.
- b. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Tow Gunner, Expert Marksmanship Qualification Badge, Improvised Tow (ITV) Gunner, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), and the Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar.
- c. He was issued the Separation Code "KFS" and the Re-entry Code "3".

d. Dates of time lost during this period: 4 October 1994 to 25 December 1994.

14. On 4 June 2019, in ABCMR Docket Number AR20180001240, the Board denied his request for an upgrade of his discharge.

15. The applicant provides a VA letter, dated 26 July 2022, that shows he was granted a service- connected disability rating of 100 percent.

16. By regulation (AR 635-200), a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions characterization of service to honorable. He contends he experienced mental health conditions that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 3 September 1992; 2) Court-martial charges were preferred on the applicant on 4 January 1995 for being AWOL from 4 October-26 December 1994; 3) The applicant was discharged from active duty on 10 March 1995 under the provisions of AR 635-200, Chapter 10, in lieu of court-martial, with the issuance of an under other than honorable conditions characterization of service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. The applicant asserts he was experiencing mental health conditions, which mitigates his misconduct. There is sufficient evidence the applicant reporting mental health symptoms while on active service. On 29 March 1994, the applicant reported experiencing memory loss, twitching, and overall uneasiness. He was also experiencing some family problems. In addition, in April 1994, he was found to be experiencing suicidal ideation and engaging in self-mutilating behavior. A review of JLV provided evidence the applicant has been diagnosed service connected Chronic Adjustment

Disorder and been treated for substance abuse disorder, tic disorder, depression, and anxiety by the VA since this discharge.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

**Kurta Questions:**

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing mental health conditions while on active service, and he has been diagnosed with service-connected Chronic Adjustment disorder by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions while on active service, and he has been diagnosed with service-connected Chronic Adjustment disorder by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant was experiencing mental health symptoms while on active service. The applicant went AWOL, and this type of avoidant behavior can be a natural sequelae to mental health conditions such as Adjustment Disorder. Therefore, there is sufficient evidence the applicant was experiencing a mitigatable mental health condition at the time of his active service.

**BOARD DISCUSSION:**

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding sufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

2. The opine noted the applicant contended he was experiencing mental health conditions while on active service, and he has been diagnosed with service-connected Chronic Adjustment disorder by the VA. However, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and DFR. The

Board noted the applicant was seen by medical professional for martial stress in 1994. The Board determined notwithstanding the medical opine, the applicant's characterization of service is not in error and denied relief

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20180001240 on 4 June 2019.

3/25/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19.

a. 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.

b. 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.

2. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

3. 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.

4. Section 1556 of Title 10, United States Code, 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//