

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008874

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (general) discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 15 May 2023
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty), for the periods ending 19 May 1987 and 13 May 1991
- Standard Form 600 (Chronological Record of Medical Care), dated 26 April 1991
- DD Form 215 (Correction to DD Form 214), dated 25 January 1996
- Department of Veteran's Affairs (VA) Letter, dated 29 July 2022
- Letter of Support, dated 15 May 2023

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 was suffering mentally before and during Desert Shield/Desert Storm and did not receive help. Prior to his deployment, his family and the local congressman requested he come home to see his dying grandmother. He was denied that privilege. During Desert Shield/Desert Storm his oldest son was taken from the home and placed in foster care. His family was denied the privilege to care of his son. These events and being in a war zone made him spiral downward with no help. The Board can review his records and see how great of a Soldier he was. In 1989, he was the first Soldier to be promoted twice in one year at Camp Ames, Korea. The applicant identified post-traumatic stress disorder (PTSD) and other mental health as an issue/condition related to his request.

3. The applicant provides a Standard Form 600, that shows, in part, on 26 April 1991, the [applicant] stated he engaged in disobedient behavior in order to be released from combat duty. He asked his chain of command for help and he feels he has not gotten it.

4. The circumstances surrounding his discharge are unavailable for the Board to review. However, his records contain a DD Form 214 which the Board may use to make a fair and impartial decision.

5. His DD Form 214 shows he was discharged on 13 May 1991 with an under honorable conditions (general) characterization of service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for misconduct-pattern of misconduct. It also shows:

- he completed 2 years, 4 months, and 3 days of active service this period
- he was awarded or authorized the Army Service Ribbon, National Defense Service Medal, and the Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- he was issued a separation code of "JKM," and a reentry code of "3"

6. On 25 January 1996, he was issued a DD Form 215, which shows in:

- item 12f (Foreign Service): 1 year, 6 month and 27 days
- item 13 (Decorations, Awards, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Add: Southwest Asia Service Medal with three bronze service stars, and the Kuwait Liberation Medal
- item 18 (Remarks): Service in Southwest Asia from 11 November 1990 to 7 May 1991

7. Regulatory guidance states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service. He contends 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 11 January 1989 with prior ARNGUS service.
- The specific facts and circumstances surrounding the applicant's discharge processing are unavailable for the Board to review.
- Applicant was discharged on 13 May 1991. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, for misconduct-pattern of misconduct with an under honorable conditions (General) characterization of service. He was issued a separation code of "JKM," and a reentry code of "3".

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, two DD Form 214, character reference letter, VA letter, ABCMR Record of Proceedings (ROP), medical documentation, 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 was suffering mentally before and during Desert Shield/Desert Storm and did not receive help. Prior to his deployment, his family and the local congressman requested he come home to see his dying grandmother. He was denied that privilege. During Desert Shield/Desert Storm his oldest son was taken from the home and placed in foster care. His family was denied the privilege to care of his son. These events and being in a war zone made him spiral downward with no help. The Board can review his records and see how great of a Soldier he was. In 1989, he was the first Soldier to be promoted twice in one year at Camp Ames, Korea. The applicant identified post-traumatic stress disorder (PTSD) and other mental health as an issue/condition related to his request.

e. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant provides hardcopy documentation, dated 26 April 1991, that states he engaged in disobedient behavior in order to be released from combat duty. The VA electronic record available for review indicates the applicant is 60% service connected including 50% for PTSD. The record indicates he initiated behavioral health care with the VA in July 2001. A psychiatry note and a separate intake note, dated 2 July 2001, indicates the applicant sought to participate in the Domestic Violence Group and receive treatment for depression. He reported symptoms of PTSD related to his deployment as well as aggression, including three incidents of domestic violence towards his wife and one incident where he became angry at a co-worker and made a verbal threat. The applicant was diagnosed with Major Depressive Disorder and Post Traumatic Stress Disorder as well as experiencing psychosocial stressors. The

applicant participated in medication management and group therapy, for domestic violence as part of his probation, via the VA from July 2001 to April 2003. He later relocated to Baltimore from California and, on 25 June 2003, reinitiated behavioral health services with the VA but did not remain in treatment. The applicant reconnected with the VA in 2018, when he was in the process of seeking service connection. A note dated 8 August 2018 indicates he reported being treated with medication by a civilian provider. The focus of that treatment was on his symptoms of depression and coping with daily stressors. A C and P examination dated 7 November 2018, indicates the applicant met diagnostic criteria for PTSD based on the stressors of fearing for his life during supply runs to the Iraqi border while he was deployed, as well as witnessing the aftermath of a suicide while deployed. The clinician further cites the applicant's diagnosis of PTSD by VA providers and his treatment with psychotropic medications by a civilian provider. The record evidences no further VA contact since April 2019.

f. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation based on a BH condition without the specific facts and circumstances that led to the applicant's discharge. However, the applicant is service connected for PTSD and there is evidence in his record of a BH condition.

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 is 50% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the record does evidence BH conditions, PTSD and Major Depressive Disorder, that could potentially mitigate certain misconduct if it did not involve violence, bodily harm, or major crimes.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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, and the reason

for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

3. A majority of the Board found that, although the specific misconduct that led to the applicant's discharge is not identified in the available evidence, in accordance with guidance for liberal consideration, his service-connected mental health diagnosis is a basis for granting the relief he seeks. A majority of the Board determined his character of service should be changed to honorable.

4. The member in the minority found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient evidence to determine if his misconduct is mitigated by a mental health condition. Based on a preponderance of the evidence, the member in the minority 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

6/25/2024

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, 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) sets forth the basic authority for the separation of enlisted personnel. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline), commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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.

3. 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.

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 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.

5. 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.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows 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.

7. 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//