

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008900

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- seven statements of support, dated 20 January 1995 to 22 January 1995

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 that since his discharge, he has lived a Christian life and given his life to God. He has been a changed man for about 30 years. He has been married for 27 years, has twin adult daughters, and four grandchildren. He does not believe an injustice occurred but believes he deserves to be considered for relief by the board based on his 33 years of suffering with his current discharge status. The applicant notes post-traumatic stress disorder (PTSD) as a condition related to his request. On his DD Form 149, the applicant claims he previously filled out a DD Form 149 in February 2018 and has not heard anything; however, he provides no further details on this claim.
3. The applicant enlisted in the Regular Army on 13 February 1985, for a 3-year period. He reenlisted on 16 November 1987. The highest rank he attained was specialist/E-4.
4. A DA Form 2329 (Record of Trial by Summary Court-Martial), shows that on 26 February 1988, the applicant was found guilty of wrongful use of marijuana, on 3 January 1988. He was sentence to reduction to private/E-1, forfeiture of \$447.60 pay, and restriction for 60 days. The sentence was approved and ordered duly executed on 8 March 1988.

5. A memorandum issued by Headquarters, 25th Infantry Division, Schofield Barracks, HI, 29 January 1990, shows the applicant was notified to appear before a board of officers on 14 February 1990 to determine whether he should be discharged from active duty for commission of a serious offense.
6. A memorandum issued by U.S. Army Trial Defense Service, Hawaii Field Office, Schofield Barracks, 5 February 1990, shows the applicant's defense counsel requested to delay the elimination proceeding until 1 March 1990. The request was approved.
7. A board of officers was convened on 1 March 1990 and found a discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, warranted due to the applicant's three positive urinalysis and breaking of restriction. The board further recommended the applicant be separated from the military with an other than honorable discharge.
8. The applicant was discharged accordingly on 13 April 1990, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code "JKQ" and reentry code 3. He was credited with 5 years, 2 months, and 1 day of net active service. He was awarded or authorized the following: Army Service Ribbon, Overseas Service Ribbon, and Army Achievement Medal.
9. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. On 12 December 1996, after careful consideration, the Board determined he was properly and equitably discharged. However, the Board directed the reason and authority for discharge be changed to "misconduct" under Army Regulation 635-200. The ADRB issued the applicant a DD Form 215 (Correction to DD Form 214) showing the directed correction.
10. The applicant provides 7 statements of support, from members of his church congregation, stating that he is a devoted Christian who loves the Lord. He is an active and supportive member of the church, a caring and responsible father, friend, employee, and co-worker, who has outstanding character and good standing in his community. He loves to help others and sets a notable example for others to follow at work, home, and church. He does not drink alcohol and is not involved with drugs or any illegal activities.
11. On 18 October 2023, the Case Management Division (CMD), Army Review Boards Agency (ARBA), sent a letter to the applicant requesting additional documentation related to the applicant's contention of PTSD. No additional documentation has been received from the applicant.

12. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of AR 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

13. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he was experiencing PTSD that mitigate his misconduct. 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 13 February 1985; 2) A DA Form 2329 (Record of Trial by Summary Court-Martial), shows that on 26 February 1988, the applicant was found guilty of wrongful use of marijuana, on 3 January 1988; 3) The applicant was discharged on 13 April 1990, Chapter 14-12c, by reason of misconduct – commission of a serious offense. His characterization of service was UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review. The applicant noted PTSD as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

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

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did repeatedly use illegal substances, which can be a sequela PTSD; but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing PTSD that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 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.

- a. The evidence shows the applicant was discharged due to misconduct following a conviction by a summary court-martial of wrongful use of marijuana, and his subsequent appearance before and finding by a board of officers that his retention was not warranted due to his three positive urinalysis and breaking of restriction. The board of officers recommended he be separated from the military with an under other than honorable discharge. The Board found no error or injustice in his separation processing. 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. 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.

- b. The Board further noted that the applicant provided evidence of post-service achievements or letters of reference in support of a clemency determination. He provides statements of support from members of his church congregation, speaking of his religious devotion to the church and active support to the church. He is described as a caring and responsible father, friend, employee, and co-worker, who has outstanding character and good standing in his community. As a result, the Board determined an upgrade to a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is appropriate. The Board also determined that such upgrade did not change the underlying reason for his separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

c. Lastly, the Board did note however that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the corrections addressed in Administrative Note(s) below, 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 amending the applicant's DD Form 214 for the period ending 13 April 1990, showing:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 13 April 1990 is missing an important entry that affects his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entry in item 18 (Remarks), "CONTINUOUS HONORABLE SERVICE FROM 19850213 UNTIL 19871115."

REFERENCES:

1. Title 10, USC, 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. Section 1556 of Title 10, 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.
3. Army Regulation 15-185 (ABCMR) 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.
4. Army Regulation 635-200, sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions is normally

appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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.

5. Army Regulation 635-5 (Personnel Separations), 15 August 1979, in effect at the time did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

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 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. 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.

7. 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//