

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009246

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (General)
- pay for accrued leave
- restoration of his rank/grade to sergeant first class (SFC)/E-7

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

- DD Form 149 (Application for Correction of Military Record), 1 June 2023
- self-authored statement, 17 May 2023
- DD Form 214 (Report of Separation from Active Duty), United States Air Force, 13 August 1978
- certificate, Good Conduct Medal, 28 November 1988
- certificate, Honorable Discharge, 11 April 1989
- certificate, Army Commendation Medal, 21 June 1989
- certificate, Good Conduct Medal, 28 November 1991
- certificate, Honorable Discharge, 13 July 1992
- Order Number 73-18, 24 May 1994
- DA Form 1059 (Service School Academic Evaluation Report), 21 July 1994
- DA Form 2166-7 (Noncommissioned Officer (NCO) Evaluation Report)
- Three memoranda for record, from SFC R.J.B., 2 February 1995, from Chief R.F., 26 February 1995, and from SFC A.P., 27 February 1995

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. A portion of the applicant's request concerns back pay for accrued leave. This issue is outside the ABCMR's purview and should be addressed to the Defense Finance and

Accounting (DFAS). Therefore, this portion of his request will not be further addressed in this record of proceedings.

3. The applicant states, in effect, he made his career changing decisions under stressful conditions and believed if he accepted a court-martial, he would have been discharged anyway. He was told from his defense counsel that he could apply for a discharge upgrade.

a. In a self-authored statement, he states, in effect, he apologized for what he did, he was "stressed out". He was working 2 years without leave, under conditions with no chance for leave in the foreseeable future. He had reached his breaking point.

b. He admitted to the charge of indecent exposure (a misdemeanor) and fully cooperated with the military police without a lawyer. The military police managed to stack/trump up additional charges, and he was not thinking clearly and did not know he would be ending his Army career.

c. He had 6 years until retirement, he had multiple enlistments and mentions these as a reflection of his character. Due to the amount of stress, major historical events, and the reduction, he is requesting a general discharge because he does not want to go to his grave with an UOTHC discharge.

d. He referenced the historical events of the Persian Gulf War, the Los Angeles riots, military led operations, bombing of the World Trade Center, and troops being sent to Haiti. He states in 2014, the Department of Defense recognized that many Veterans had received discharges due to behavior connected to their previously undiagnosed or undocumented post-traumatic stress disorder (PTSD) or mental health conditions.

4. The applicant enlisted in the Regular Air Force on 14 August 1974. He was honorably released from active duty on 13 August 1978, serving 4 years of net active service. He was awarded the Air and Space Longevity Service Award and the Air Force Good Conduct Medal.

5. He enlisted in the Regular Army on 29 November 1985, for a 4-year period. On 12 April 1989 he reenlisted. On 14 July 1992, he again reenlisted for a 4-year period. The highest rank he attained was sergeant first class/E-7 with a date of rank of 1 July 1994.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet), dated 17 January 1995, shows he was charged with the following:

a. Making a sworn written statement, with the intent to deceive Investigator A.L., on or about 12 September 1994, that "this was the first time he had exposed himself in public" which the statement was false in that he had in fact exposed himself in public at least one prior occasion.

b. Willfully and wrongfully exposing himself in an indecent manner to public view of his penis on or between 1 July 1994 and 1 September 1994, while standing at the customer service counter at the Main Exchange, which brought discredit upon the armed services.

c. Willfully and wrongfully exposing himself in an indecent manner to public view of his penis on or about 12 September 1994, while standing in the magazine section of the Main Exchange, which brought discredit upon the armed services.

d. Wrongfully and unlawfully making under lawful oath a false statement on or about 12 September 1994 in substance as follows: "This is the first time I have done this" (exposing himself), which statement he did not then believe to be true.

7. The applicant consulted with legal counsel on 27 February 1995 and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for her contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to submit a statement in his own behalf.

(1) His stated in effect, he requested his command approve his request for discharge and consider giving him a under honorable conditions (general) discharge. Stating for the past 13 years, he had done the very best he could to be a top Soldier

and lead by example. He was proud to say that, except for the incident of him exposing himself.

(2) He had no explanation or excuse for his actions. He signed up for counseling so he could better understand why he would do such a thing and wanted to regain control over himself.

(3) He understood his actions were not compatible with future military service, which was why he chose to submit a request for discharge. He requested leniency in the form of a general discharge to ensure his transition into the civilian world would be easier on himself and his family.

(4) He knew with therapy; he would overcome his problem. His family was loving and supportive, and he knew with God's help he would again be a well-respected leader in his community and a man whom his family and friends would be proud of.

8. The applicant's official military personnel file is void of the commanders and intermediate commanders' approval or disapproval of the applicant's request for discharge; however, on 1 March 1995, the staff judge advocate, recommended approval of the applicant's request for discharge. Additionally, stating the entire chain of command recommended approval of the request for discharge with issuance of an other than honorable discharge certificate.

9. On 3 March 1995, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge. Additionally stating, the charges and specifications which were referred to trial on 2 February 1995 were withdrawn and dismissed.

10. The applicant was discharged on 13 March 1995, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code 3. He was credited with 9 years, 3 months, and 15 days of net active service, with 4 years total prior active service. He was awarded the following decorations, medals, badges, citations and campaign ribbons:

- Army Commendation Medal
- Army Achievement Medal
- Air Force Outstanding Unit Award
- Army Good Conduct Medal (2nd award)
- Air Force Good Conduct Medal
- National Defense Service Medal (2nd award)
- NCO Professional Development Ribbon with numeral 3

- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- Expert Marksmanship Qualification Badge with Grenade Bar
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar

11. The applicant additionally provides:

a. Five certificates showing he received two Army Good Conduct Medals, the Army Commendation Medal, two honorable discharges for his first and second reenlistments;

b. Order Number 73-18, showing the applicant was promoted to the rank of sergeant first class with a date of rank of 1 July 1994;

c. His DA Form 1059 (Service School Academic Evaluation Report) showing he achieved the course standards for Advanced NCO Course;

d. His DA Form 2166-7 (NCO Evaluation Report) dated 3 March 1995, showing he was dedicated to the mission and maintained high training standards; and

e. Three memoranda for record, from SFC R.J.B, from Chief R.F., and SFC A.P., summarizing the applicant's behavior while on active duty as hard working and effective, who was a valuable member of the team. He completed tasks with no complaints, with outstanding work and leadership, and all of whom stated the Army would benefit from his continued service at the time.

12. On 4 April 1997, the Army Discharge Review Board (ADRB) carefully examined the applicant's military records and all other available evidence. The ADRB determined that the applicant was both properly and equitably discharged and voted to deny relief.

13. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he

experienced an undiagnosed mental health condition, including PTSD, 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:

- The applicant enlisted into the Regular Air Force on 14 August 1974 and was honorably released from active duty on 13 August 1978. He enlisted in the Regular Army on 29 November 1985, and he reenlisted on 12 April 1989 and again on 14 July 1992.
- Following court martial charges against him involving allegations of publicly exposing himself in an indecent manner (twice) and making a false statement, the applicant requested discharge from the Army, which was approved by the separation authority on 3 March 1995.
- The applicant was discharged on 13 March 1995, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. He was credited with 9 years, 3 months, and 15 days of net active service, with 4 years total prior active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that he was under significant work-related stress during the time leading up to the misconduct, and he attributes other major world events to his perceived trauma experience. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a 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 asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Additionally, there is no nexus between

his mental health condition, including PTSD, and his misconduct related to indecent exposure and making a false statement: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

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 was charged with indecent exposure and false official statement, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate. With respect to his rank/grade, when the separation authority approved the applicant's voluntary discharge in lieu of trial by court-martial, he ordered the applicant's reduction to the lowest enlisted grade as required by regulation. This grade is correctly shown on the applicant's DD Form 214 and the Board found no error or injustice to support changing the rank/grade.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 for correction of the records of the individual concerned.

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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.

ADMINISTRATIVE NOTE:

A review of the applicant's service record shows a remark was omitted from his DD Form 214. As a result, amend his DD Form 214, for the period ending 13 March 1995, to show in item 18 (Remarks): Continuous Honorable Active Service from 29 November 1985 until 13 July 1992.



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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. AR 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Paragraph 1-14 of AR 635-200 states that when a member was to be discharged under other than honorable conditions, the convening authority would direct an immediate reduction to the lowest enlisted grade.

b. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

c. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his

ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

d. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

e. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service. When a Soldier is to be discharged UOTHC, the separation authority will direct an immediate reduction to private/E-1, in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

4. AR 635-8 (Separation Processing and Documents) outlines the preparation instructions for a DD Form 214. It states in paragraph 5-6 (Rules for Completing the DD Form 214) for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

5. 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.

6. 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, 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//