

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230009555

APPLICANT REQUESTS: a personal appearance before the Board, and reconsideration of his previous request for correction of his DD Form 214 (Report of Separation from Active Duty) as follows:

- his under honorable conditions (general) discharge be upgraded to honorable
- change Item 1 (Name) from [REDACTED] to [REDACTED]

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Certificate of Live Birth, dated [REDACTED]
- letters, Department of Veterans Affairs, dated 3 August 2011 and 19 June 2023
- statements of support, dated 20 April 2009 to 16 January 2012 (five)
- testimonials, Vets Helping Vets (Facebook page), printed 19 June 2023
- Identification Cards (three)

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 AR20090016017 on 6 April 2010.

2. As a new argument, the applicant states, he was diagnosed with post-traumatic stress disorder (PTSD) which was caused or agitated by his military service. He has provided multiple testimonies regarding his service on and around the demilitarized zone (DMZ) in Korea. Within three weeks of being stationed at Fort Campbell, KY, after returning from Korea, his identity was changed on 31 July 1978. He performed law enforcement operations which most Soldiers did not or would not perform. Word spread around his new battalion that he was a "cop" which caused fights. The name change also caused him problems. He was told the paperwork promoting him to specialist/E-4 was misplaced. He created Vets Helping Vets post-service.

3. The applicant enlisted in the Regular Army on 29 December 1976 for a 3-year period. His name is shown as [REDACTED] on his enlistment documents. Upon completion of his initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.
4. The applicant was assigned to Company Bravo, 1st Battalion, 32nd Regiment, 2nd Infantry Division, in the Republic of Korea, from 19 June 1977 until 28 May 1978.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 11 October 1977, for disobeying a lawful order from two superior noncommissioned officers (NCO), on or about 10 September 1977. His punishment consisted of forfeiture of \$50.00 pay and 14 days of extra duty.
6. The applicant petitioned to have his name changed. A DA Form 4187 (Personnel Action), dated 1 August 1978, shows his name of record was changed from [REDACTED] to [REDACTED] on all official records as verified by the original petition for the named change.
7. A DA Form 4465 (Army Drug and Alcohol Prevention and Control Program [ADAPCP] Military Client Intake and Follow-Up Record), dated 26 September 1978, show the applicant self-referred to the ADAPC Program for habitual excessive drinking and improper use of cannabis sativa. He was enrolled in resident rehabilitation.
8. The applicant's immediate commander notified the applicant on 21 February 1979 of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, under the Expeditious Discharge Program (EDP), with an under honorable conditions (general) discharge. As the specific reasons for the proposed action, his commander noted the applicant's disregard for his supervisors, lack of self-discipline, and his requirement for constant supervision to meet the minimum standard.
9. On that same date, the applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of waiving his rights. He voluntarily consented to the separation and elected not to submit a statement in his own behalf.
10. The applicant's commander formally recommended the applicant's separation from service under the provisions of AR 635-200, paragraph 5-31, by reason of the applicant's failure to comply with the simplest required tasks, his disobeying and verbally threatening supervisors, and a record of tardiness and failure to repair. The commander further provided a summary of counseling which included ten dates when the applicant was counseled for poor conduct and efficiency, tardiness, and absence.

11. On 21 February 1979, the separation authority approved the recommended separation action and directed the issuance of a DD Form 257A (General Discharge Certificate).

12. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 1 March 1979, for disobeying a lawful order from his superior NCO, on or about 20 February 1979. His punishment consisted of forfeiture of \$100.00 pay.

13. Accordingly, the applicant was discharged on 6 March 1979, under the provisions of AR 635-200, paragraph 5-31. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JGH and reenlistment code RE-3. He was credited with 2 years, 1 month, and 12 days of net active service. He was authorized or awarded the following:

- Air Assault Badge
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Grenade Bar

14. The Army Discharge Review Board (ADRB) considered the applicant's request for a discharge upgrade on 21 October 1981. The Board determined the applicant was properly discharged. His request for relief was denied.

15. On 6 April 2010, the ABCMR reviewed the applicant's request for an upgrade of his characterization of service and the correction of his name and awards listed on his DD Form 214. After careful consideration, the Board determined:

a. The applicant enlisted in the Army under the name [REDACTED] in January 1977. He legally changed his name in December [sic] 1978 to [REDACTED]. He served under his legally changed name until his separation from service. The evidence did not show that the Army's records were in error. The Board denied this portion of his request.

b. The evidence provided to the Board was insufficient to warrant an upgrade of his characterization of service. The Board denied this portion of his request.

c. The Board recommended adding the Korea Defense Service Medal and the Expert Marksmanship Qualification Badge with Pistol Bar (.45 Caliber) to item 26 (Decorations, Medals, Badges...).

d. The applicant was issued a DD Form 215 (Correction to DD Form 214) on 5 May 2010 with corrections to Item 26.

16. The applicant provides:

- a. A copy of his Birth Certificate, dated [REDACTED], showing his name as [REDACTED].
  - b. Two letters from the Department of Veterans Affairs, dated 3 August 2011 and 19 June 2023, show the applicant has been treated for PTSD related to his service in Korea as a unit police officer and combat related activities on the DMZ. He also suffers from Neuropathic Peripheral Nerve Disorder from possible herbicide exposure. He has a 100 percent, permanent and total, combined service-connected disability rating. He is unemployable due to his service-connected disabilities.
  - c. In five statements of support, dated 20 April 2009 to 16 January 2012, retired servicemembers who previously served with the applicant, attest to the rigors of the applicant's duties while assigned as a Unit Police Officer on the DMZ. The special duty assignment required the applicant to perform as a gate guard, security patrol, and first responder, often in inclement weather, in precarious and potentially harmful situations. He participated in live ammunition combat missions on the DMZ, was ordered to fire upon a squad-sized unit, responded to two downed helicopter incidents, and was accidentally stabbed by a bayonet prior to a military parade.
  - d. The applicant founded Vets Helping Vets on 20 January 2009, which is managed through Facebook. Multiple testimonials, printed from the site on 19 June 2023, reiterate and/or corroborate the statements above, regarding the applicant's duties on the DMZ. Additional posts show his multiple acts of volunteerism. He was recognized by the Texas Veterans of Foreign Wars (VFW), in 2011, for completing 10,000 hours of community service and was honored for his military service by Congressman Pete Sessions.
  - e. Three forms of identification, to include the applicant's Department of Defense Uniformed Services Identification and Privilege Card, [REDACTED] Driver License, and Department of Veterans Affairs Identification Card, show the applicant's current name as [REDACTED].
17. Regulatory guidance states, individuals discharged under the EDP were issued either a general or honorable discharge characterization of service.
  18. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.
  19. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

## 20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced 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: 1) The applicant enlisted into the Regular Army on 29 December 1976; 2) The applicant accepted nonjudicial punishment, on 11 October 1977, for disobeying a lawful order from two superior NCOs; 3) The applicant's immediate commander notified the applicant on 21 February 1979 of his intent to initiate action to separate him from service under the under the Expeditious Discharge Program (EDP) with an under honorable conditions (general) discharge. As the specific reasons for the proposed action, his commander noted the applicant's disregard for his supervisors, lack of self-discipline, and his requirement for constant supervision to meet the minimum standard; 4) The applicant accepted nonjudicial punishment, on 1 March 1979, for disobeying a lawful order from his superior NCO; 5) The applicant was discharged on 6 March 1979, under the provisions of AR 635-200, paragraph 5-31. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JGH and reenlistment code RE-3. He was credited with 2 years, 1 month, and 12 days of net active 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) and hardcopy VA documentation provided by the applicant were also examined.

d. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There was insufficient evidence the applicant was diagnosed with PTSD or another psychiatric condition while on active service. There was evidence the applicant was self-referred to the Army Drug and Alcohol Prevention and Control Program (ADAPCP) on 26 September 1978. The applicant reported to be engaged in habitual excessive drinking and improper use of cannabis sativa. He was enrolled in resident rehabilitation.

e. A review of JLV provided evidence the applicant began to engage with the VA system of care in 2009. He was initially diagnosed with a Psychotic Disorder. The applicant provided various and inconsistent histories of his childhood and military experiences. He consistently demonstrated disorganized thinking and psychotic behavior during his evaluations and in treatment, but there was concern that he had been exposed to traumatic experiences in his childhood and potentially during his military career. The applicant underwent his initial Compensation and Pension (C&P) evaluation in 2009. Due to the applicant's psychotic behavior, previous diagnoses of Psychotic Disorder and Other Specified Personality Disorder with schizotypal and

paranoid traits, and his potential history of childhood trauma and abuse, his current symptomatology was not solely attributed to service-connected PTSD. The applicant provided notable different accounts of his military experiences including potentially traumatic events in his following C&P evaluations. However, it was eventually determined the applicant was likely experiencing PTSD related to his childhood experiences prior to his enlistment and more likely than not experienced a potentially traumatic event during his military service which due to his disorganized and paranoid thinking resulted in service-connected PTSD. The applicant was therefore awarded 100% service-connected disability for PTSD in 2020.

f. Based on the available information, it is the opinion of the Agency Behavioral Health 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 asserts he experienced PTSD while on active service which mitigates his misconduct. The applicant has been found to be 100% disabled for service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service which mitigates his misconduct. The applicant has been found to be 100% disabled for service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The applicant did engage in erratic behavior and demonstrated difficulty to maintain his military duties and standards. There is a nexus between this type of behavior and the applicant's diagnosis of service-connected PTSD and also his developing problem with disorganized and paranoid thoughts. Therefore, there is evidence the applicant's misconduct is mitigatable per Liberal Consideration.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 the medical advisory the Board

considered the advising official finding sufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. The Board noted the opine review that there is a nexus between this type of behavior and the applicant's diagnosis of service-connected PTSD and also his developing problem with disorganized and paranoid thoughts.

2. The Board recognizes that 30 years ago the diagnosis of PTSD was not evaluated or understood. However, the Board determined the applicant during his 2-year period of service had numerous instances of misconduct with a total disregard for his supervisors, lack of self-discipline, and his requirement for constant supervision to meet the minimum standard. The applicant provided compelling character references and letters of support for the Board to consider in determining clemency. However, the Board found insufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination. The applicant was discharged under the Expeditious Discharge Program (EDP) and was provided an under honorable conditions (General) characterization of service.

3. The Board agreed notwithstanding the advising opine of a nexus between his behavior and the applicant's diagnosis of PTSD, that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. However, during deliberation the Board agreed there is sufficient evidence to support amending the applicant's DD Form 214 to add his requested name correction to item 27 (Remarks) as shown on his certificate of live birth. Based on the preponderance of evidence, the Board grant partial relief to amend the applicant's DD Form 214 to adding A.K.A to item 27 of his DD Form 214.

4. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

5. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding to the applicant's DD Fomr2 214 in item 27 (Remarks) also known as (A.K.A) the applicant's name as it appears on his certificate of live birth.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of the applicant's under honorable conditions (general) discharge to honorable.

4/11/2024

X

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CHAIRPERSON

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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. Title 10, U.S. Code, Section 1556, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

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. 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 PTSD; 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 Service 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//