

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009564

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- letter from the Department of Veterans Affairs (VA), 1 March 2023

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 AC95-10429 on 21 August 1996.

2. As a new argument, the applicant states, in effect, the VA changed his UOTHC discharge to honorable from 29 October 1985 to 18 December 1992, and he would like a new DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect this change. The applicant notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request.

3. The applicant enlisted in the Regular Army on 30 October 1985. He served in Korea from 20 July 1987 through 17 August 1988. He reenlisted on 25 May 1989, for 4 years. He again served in Korea from 23 January 1990 to 23 May 1991. The highest rank/grade he held was specialist/E-4.

4. Three DA Forms 4187-E (Personnel Action) show, effective 29 August 1992, the applicant's unit reported him absent without leave (AWOL), and on 27 September 1992 he was dropped from the rolls. His duty status changed to returned to military control when he surrendered to military authorities on 28 October 1992.

5. On 3 November 1992, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with absenting himself from

his organization from on or about 29 August 1992 and did remain so absent until on or about 28 October 1992.

6. On the same date, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the uniform code of military justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He elected not to submit a statement in his own behalf and not to undergo a physical evaluation prior to separation.

7. The applicant's immediate commander recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

8. On 9 December 1992, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the issuance of an UOTHC discharge and reduction to private/E-1.

9. Two DA Forms 4187-E show, effective 4 January 1992, the applicant's unit reported him AWOL. His duty status changed to present for duty on 10 January 1992.

10. The applicant was discharged accordingly on 18 December 1992, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation code of "KFS" and a reentry code "RE-3." His DD Form 214 contains the following entries:

a. He completed 6 years, 11 months, and 20 days of net active service with 2 years, 4 months, and 27 days of foreign service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized), the entries:

- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Army Achievement Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar

c. Block 18 (Remarks), shows the entry “IMMEDIATE REENLISTMENT THIS PERIOD: 890525 – 930524.”

d. Block 29 (Dates of Time Lost During This Period), shows the entry 29 August 1992 thru 28 October 1992.

11. As new evidence, the applicant provides a letter from the VA notifying him of their decision to recognize his military service for the period of 29 October 1985 through 18 December 1992 as honorable for the purpose of granting him VA benefits.

12. The ABCMR considered the applicant's request for an upgrade of his uncharacterized discharge on 21 August 1996. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

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 Regular Army on 30 October 1985. He served in Korea from 20 July 1987 through 17 August 1988. He reenlisted on 25 May 1989, for 4 years. He again served in Korea from 23 January 1990 to 23 May 1991.
- Three DA Forms 4187-E (Personnel Action) show, effective 29 August 1992, the applicant's unit reported him absent without leave (AWOL), and on 27 September 1992 he was dropped from the rolls. His duty status changed to returned to military control when he surrendered to military authorities on 28 October 1992.
- On 3 November 1992, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with absenting himself from his organization from on or about 29 August 1992 and did remain so absent until on or about 28 October 1992.
- Applicant was discharged on 18 December 1992, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He received a separation code of "KFS" and a reentry code "RE-3."
- ABCMR considered the applicant's request for an upgrade of his discharge on 21 August 1996. After reviewing the application and all supporting documents, the Board determined relief was not warranted.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), 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.

As a new argument, the applicant states, the VA changed his UOTHC discharge to honorable from 29 October 1985 to 18 December 1992, and he would like a new DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect this change. The applicant notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request. As new evidence, the applicant provides a letter from the VA notifying him of their decision to recognize his military service for the period of 29 October 1985 through 18 December 1992 as honorable for the purpose of granting him VA benefits.

d. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic medical records available for review indicate the applicant is 50% service connected for medical reasons. However, the applicant initiated behavioral health services with the VA in September 2022 via the crisis line due to suicidal ideation. He later participated in a comprehensive mental health intake assessment on 8 December 2022 and shared an extensive psychiatric history and being treated by providers via his county mental health services from 2014 to 2018. The applicant reported previous diagnoses of depression, anxiety, and PTSD as well as

treatment with medication for symptoms of psychosis, anxiety, and depression. He further shared what appeared to be dissociative episodes where he engaged in odd/bizarre behaviors but did not remember the incident. A psychiatry appointment, on 20 January 2023, diagnosed the applicant with Agoraphobia, Depression, and PTSD related to his military service. The record further evidences an 8 February 2023 encounter with the VA homeless program; he continues to receive support currently. Due to concerns related to his symptoms and presentation, he participated in a comprehensive mental health evaluation on 26 April 2023, the diagnostic impression was as follows: PTSD, chronic; Mood Disorder unspecified; History of Alcohol Use Disorder; rule-out Bipolar Disorder; and rule-out Major Neurocognitive Disorder. As a result, he was referred for a neurology consult on 17 August 2023. The results of that consult indicated numerous risk factors for cognitive decline and possible dementia. He evidenced Mild Cognitive Impairment, Fecal Incontinence, Major Depressive Disorder, PTSD, Orthostatic hypotension, and Physical deconditioning. He was referred for neuropsychological testing and participated in that assessment on 23 January 2024. He reported onset of cognitive difficulties after sustaining a head injury during his military service. He stated he was hit in the head while helmeted/wearing Kevlar, resulting in loss of consciousness. He stated receiving an initial medical assessment and was informed he had no visible injuries. After this event, he reportedly had difficulty remembering where he was going during live patrols. He stated his cognitive difficulties have progressively worsened over the past 30+ years. During the assessment, he endorsed feelings of depression and generalized anxiety and reported seeing shadowy figures and hearing voices. He noted these perceptual experiences as related to his military service and regularly occur in the context of PTSD-related flashbacks and nightmares. The results of that assessment indicate the applicant is experiencing neurologically-mediated cognitive difficulties in addition to his prominent mental health symptoms of ongoing chronic PTSD and depression.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant likely had a behavioral health condition that mitigates his misconduct.

#### 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 diagnosed with PTSD and Major Depression by the VA and his symptoms are attributed to his military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The VA electronic record indicates ongoing treatment and assessment for PTSD and

Major Depression. Given the nexus between PTSD and Major Depression and avoidance, the applicant's incident of AWOL that resulted in his discharge is mitigated by his behavioral health condition.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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 applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that in view of his AWOL, his service did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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. In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AC95-10429 on 21 August 1996. 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 ending on 18 December 1992 to show:

- 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

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 upgrading his discharge to honorable. 2.

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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(S):

A review of the applicant's record shows his DD Form 214, for the period ending 18 December 1992, is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE ACTIVE SERVICE: 851029 - 890524
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

REFERENCES:

1. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. 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.



c. 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.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

3. 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.

4. 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//