

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009791

APPLICANT REQUESTS:

- upgraded his under honorable conditions (general) discharge be honorable
- restore his rank to private first class (PFC)
- award of certain military awards
- personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- National Personnel Records Center Letter

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:

a. It is his belief; due to his service-connected disabilities he was discharged in error. Post traumatic stress disorder (PTSD) is related to his request. He also feels due to this error he was discounted certain military awards. He served in support of Operation Desert Storm and due to his disciplinary injustices, he was never given proper medical evaluations nor was there any mental care provided 90 days prior to his discharge. He requests correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty). He is eligible for the Kuwaiti Liberation Medal (Kuwait) as well as other awards achieved but never received or given credit for i.e. the Army Achievement Medal, Army Commendation Medal (ARCOM), and the Army Good Conduct Medal. He requests his highest rank/grade of PFC/E-3 be restored.

b. The correction should be made because he was bullied, harassed, and physically assaulted by members of his deploying unit that was attached to in Saudi Arabia. The

command enabled the abuse by punishing him with two reductions in rank while going lightly on his abusers. Records will prove that he was an exemplary Soldier prior to deployment as he was the service battalion sergeant major's driver. Upon deployment he was eligible for promotion to specialist/E-4 and was told by command "we're not using slots on other Soldiers." Upon returning to his unit, First Sergeant T\_\_ told him he was going to kick him out of the Army. His unit had a permanent change of station to Fort Polk, LA. As a black Soldier, he was racially profiled by Alexandria police for asking a question and this escalated in 30 seconds to a two-day arrest where he was not allowed to post a \$50.00 bond. He was out of the Army within days and fell off mentally.

c. He knew he was wronged but he lacked the mental fortitude to stand up for himself. He didn't know what PTSD was then until he was diagnosed in 2009. He just thought he was a "f\_\_ up who just couldn't get it together." He now has put in the work to understand himself and he knows that the trauma he suffered in that deployment changed him mentally and he never recovered. As a father he wants his kids to remember him as an honorable veteran. He wasn't given a chance to redeem himself.

3. The applicant enlisted in the New York Army National Guard (NYARNG) on 8 March 1989. He entered active duty for training on 21 March 1989. He was released from active duty (REFRAD) on 4 August 1989 and transferred to ARNG. His DD Form 214 shows he was REFRAD for completion of active-duty training. His service was uncharacterized. He completed 4 months and 14 days of net active service (See Administrative Notes).

4. The applicant was discharged from the NYARNG on 29 November 1990 per Order Number 10-011 dated 15 November 1991.

5. The applicant enlisted in the Regular Army on 30 November 1990 for 4 years. His military occupational specialty (MOS) was 91A (Medical Specialist).

6. The applicant served in Germany from on or about 27 April 1991 to 30 August 1992 and in Saudi Arabia (Southwest Asia (SWA)) from 23 January 1992 through 27 June 1992.

7. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 22 March 1992, for unlawfully striking Specialist/E-4 BF\_\_ on the jaw with his fist on or about 13 March 1992; his punishment consisted of extra duty, restriction, and forfeiture \$242.00 and reduction to E-2 (suspended)
- 18 June 1992, for disrespectful language on or about 12 June 1992; his punishment consisted of reprimand, restriction, extra duty, reduction to E-1 and forfeiture of \$183.33 (7 days' pay)

8. The Report of Mental Status Evaluation, dated 20 October 1992, shows the applicant had the mental capacity to understand and participate in the proceedings, and was mentally responsible. The applicant was submitted for administration separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, the brief examination did not suggest the presence of a psychotic thought process or major affective disorder. Formal psychological evaluation was not indicated at this time. The applicant was cleared for administration actions as deemed appropriate by command.
9. The applicant received counseling on 26 October 1992 for a continued pattern of misconduct and on 19 November 1992 for a verbal altercation with PFC J\_\_.
10. The applicant accepted NJP under Article 15 of the UCMJ on 10 November 1992, for unlawfully striking another Soldier on his head with a clenched fist on or about 14 October 1992. His punishment consisted of forfeiture \$183.00 (suspended), restriction, and extra duty.
11. The applicant's immediate commander notified him on 19 November 1992, that he was initiating action to separate the applicant under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct. His commander recommended he receive an honorable discharge. The applicant acknowledged receipt on the same date.
12. The applicant consulted with legal counsel on 19 November 1992 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14 for misconduct, and the procedures and rights that were available to him.
  - a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).
  - b. He elected to submit statements in his own behalf; however, a statement is not available for review.
13. The applicant's immediate commander formally recommended the applicant be separated from active military service. The commander recommended he receive an Honorable Discharge Certificate and he requested a waiver of rehabilitative transfer requirements.
14. His chain of command recommended the applicant be discharge with a under honorable conditions (general) discharge.

15. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14-12b, on 19 November 1992 and directed that the applicant be furnished a General Discharge Certificate.

16. The applicant was discharged on 6 January 1993. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKM and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 2 years, 1 month, and 7 days of net active service this period. He served in SWA from 23 January 1992 to 27 June 1992. He was awarded or authorized:

- Army Achievement Medal
- Army Service Ribbon
- National Defense service Medal
- Overseas Service Ribbon with numeral one
- Southwest Asia Service Medal with one bronze serve star
- Parachutist Badge

17. AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

18. By regulation AR 600-8-22 (Military Awards), all personal decorations require a formal recommendation, approval through the chain of command, and announcement in orders.

19. The applicant provides a NPRC notification that shows charge out information: removed for Veterans Administration scanning project on 23 October 2023.

20. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

21. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) discharge to honorable. 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 Army on 30 November 1990 with an MOS of 91A, Medical Specialist. He served in Germany from April 1991 to August 1992 and in Saudi Arabia from January to June 1992.
- The applicant had a physical altercation in March 1992 and a verbal altercation in June 1992. Both resulted in the applicant accepting nonjudicial punishment under Article 15 of the UCMJ. The applicant accepted another NJP under Article 15 of the UCMJ in November 1992 for striking another soldier, and his command initiated action to separate him under the provisions of AR 635-200, Chapter 14-12b, for patterns of misconduct.
- The applicant was discharged on 6 January 1993. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKM and Reentry Code 3. He completed 2 years, 1 month, and 7 days of net active service this period. He also has 4 months and 14 days of net active service from his time in the New York Army National Guard. This period was uncharacterized and he was REFRAD for completion of active duty training.

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 discharged in error and is deserved of an honorable characterization because of his service-connected PTSD. A mental status examination was conducted on 20 October 1992 as part of his separation, and there was no indication of a psychotic thought process or major affective disorder. The applicant was deemed to have the capacity to understand and participate in the proceedings, and he was cleared for administrative actions. 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 that the applicant is 100% service connected for PTSD, and he has intermittently engaged with the VA for mental health treatment from 2010 to 2024. He has been diagnosed with PTSD, Depression, and Alcohol Dependence, and he has had seven trials of medications between 2011 and 2022. Documentation reflects that the applicant has sought care primarily through the emergency room or as a walk-in to a mental health clinic, but he does not consistently presented for follow up treatment. He has utilized the homeless services at VA and most of the documentation indicates recent job loss, anger, interpersonal difficulties, and anxiety. The documentation discusses trauma experiences including: exposure to combat and casualties; clean up detail and exposure to dead Iraqis; and responding to scud missile alerts. Additionally, the documentation discusses the applicant's childhood and adolescent history of trauma exposure. There is also indication of history of military sexual trauma that occurred while the applicant was stationed in Germany. There is sufficient evidence in his VA record to support a diagnosis of PTSD and other mental health conditions.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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, PTSD, at the time of the misconduct. The applicant has been found to be 100% disabled for service-connected PTSD. Applicant has also reported he was a victim of MST.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition, including PTSD, while on active service. The applicant has been found to be 100% disabled for service-connected PTSD. He also reported experiencing an MST during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence that the applicant was experiencing a mitigating mental health condition, PTSD due to combat, while on active service. In addition, he has reported he was the victim of MST while stationed in Germany. As anger and irritability are a natural sequela to both PTSD and MST, there is a nexus between the type of behavior associated with the applicant's misconduct and the applicant's diagnoses of service-connected PTSD and MST. Therefore, there is evidence the applicant's misconduct is fully mitigatable per Liberal Consideration.

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.

a. Discharge Upgrade: Grant. the applicant was discharged due to misconduct following multiple instances of assault. He received a general discharge. The Board found no error or injustice in her 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 advisory opinion finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. As a result, the Board determined an honorable 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.

b. Grade: Deny. The applicant violated the UCMJ and received an Article 15 on 22 March 1992, for unlawfully striking a Soldier on the jaw with his fist. The resultant punishment included a suspended reduction to private/E-2. He again violated the UCMJ and received an Article 15 for disrespectful language. The resultant punishment included reduction to private/E-1. There is no evidence he was promoted back to a higher grade after his reduction. As such, his DD Form 214 correctly reflects the grade he held at the time of separation.

c. Award: No action. The applicant did specify a particular award. He also did not provide a recommendation for an award that is endorsed by members of his former chain of command, detailing his heroism, achievements, or service, and approved by an award approval authority. The applicant is advised to review Title 10, U.S. Code, section 1130 regarding reconstruction and submitting an award recommendation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 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 amending the applicant's DD Form 214 for the period ending 6 January 1993 showing:

- Character of Service: Honorable)
- 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 adding any relief in excess of that described above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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):

The applicant completed a period of initial active duty for training (IADT). He was awarded a MOS at the completion of training and was transferred back to the ARNG. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 4 August 1989 showing his character of service as Honorable.

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. Title 10, USC, 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.
3. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.



a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. 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 was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

5. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

- Block 4a (Grade, Rate, or Rank) 4b (Pay Grade) enter the rank.

- Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) entries will be for all periods of service. Check soldiers' service records for validity of awards. Do not abbreviate when listing the entries.
- Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

6. AR 600-8-22 (Military Awards) provides Department of the Army policy, criteria, and administrative instructions concerning individual military decorations, Army Good Conduct Medals, service medals and ribbons, combat and special skill badges and tabs, unit decorations, trophies, and similar devices awarded in recognition of accomplishments:

a. The Army Good Conduct Medal is awarded to individuals who distinguish themselves by their conduct, efficiency, and fidelity. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of active Federal military service of more than 1 year but less than 3 years. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of Federal military service.

b. The ARCOM is awarded to any Servicemember of the Armed Forces of the United States who, while serving in any capacity with the Army after 6 December 1941, distinguishes himself or herself by heroism, meritorious achievement, or meritorious service. As with all personal decorations, award of the ARCOM requires a formal recommendation, approval through the chain of command, and announcement in orders.

c. The Kuwait Liberation Medal awarded by the Government of Kuwait is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 2 August 1990 and 31 August 1993.

7. 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 Service 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//