

IN THE CASE OF: ██████████

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230010039

APPLICANT REQUESTS: his bad conduct discharge (BCD) be upgraded to an under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Charges
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical Document (one page)

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. After the invasion of the Gulf War, he had some issues that got the best of him due to the war. He has been diagnosed with post-traumatic stress disorder (PTSD); he is learning how to deal with them. He contends that he had no issues while he was in the U.S. Marine Corps (USMC) from 1984 to 1988, he had an honorable discharge.

b. He joined the USMC immediately after graduating high school. He left the USMC due to family problems. During his short separation from the Armed Forces he proved to be most miserable and he enlisted in the Army in February 1989. He deployed to Operation Desert Storm/Operation Desert Shield in August 1990. His leadership showed no compassion to loss of life (even if they were the enemy). Many things happened to him during that deployment that created a void within him. It bothered him that his command would rejoice in the loss of men's lives. He lost two good friends, and he had two friends hurt by landmines during the deployment. His command appeared to show no compassion.

c. He lost trust in his leadership, and once back stateside, his whole demeanor had changed. He was a young man in his twenties, and he never considered he would need counseling because of the things he had experienced. He did not know how to get past the depression and anger from his deployment. He went absent without leave (AWOL) on 2 August 1991. He was going through a shameful separation and suffering from severe depression and alcoholism. He was never offered an opportunity to seek any type of assistance to deal with the affect left by the deployment. He was not the same after returning from deployment.

d. Prior to his deployment to Saudi Arabia, he was set on a course to become a career Soldier. He had received a number of commendations, promotions, and certifications; however, after his deployment he began receiving bad evaluations, he lost the ability to Soldier and eventually he went AWOL.

3. The applicant enlisted in the USMC on 7 September 1984. His DD Form 214 shows he was discharged on 6 September 1988. His characterization of service is not shown. He completed 4 years of net active service this period. His awards include the USMC Good Conduct Medal.

4. The applicant enlisted in the Regular Army on 9 February 1989 for 4 years. His military occupational specialty was 11B (infantryman).

5. The applicant served in Saudi Arabia from 13 August 1990 through 18 April 1991.

6. He accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 13 June 1991, for without authority, failure to go at the time prescribed to his appointed place of duty on or about 20 May 1991 and on or about 21 May 1991. His punishment consisted of forfeiture of \$295.00 (suspended), restriction and extra duty.

7. The applicant was AWOL on 12 August 1991 and dropped from the rolls on 11 September 1991.

8. Court martial charges were preferred against the applicant on 13 September 1991. His DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 12 August 1991 and did remain so absent.

9. The applicant was confined by military authorities on 15 September 2015. He was present for duty on 22 September 2015, and was released from pretrial confinement.

10. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's court-martial. The approved sentence of a general or special court-martial is also not available for review.

11. The applicant was discharged on 5 May 2017. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Active-Duty Administrative Separations), Chapter 3, as a result of court-martial (other). His service was characterized as bad conduct. He completed 4 years, 1 month, and 17 days of net active service. He lost time from 12 August 1991 to 14 September 2015, and 15 September 2015 to 21 September 2015. His awards include the:

- Army Achievement Medal
- USMC Good Conduct Medal (2nd award)
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Southwest Asia Service Medal
- Parachutist Badge.

12. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

13. The applicant provides:

- a. A screenshot of charges and a copy of his DD Form 214 as discussed above.
- b. A page of a medical record that shows PTSD, depressive disorder, and alcohol abuse.

14. 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.

15. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting his bad conduct discharge (BCD) be upgraded to under honorable conditions (general) discharge. He contends he was experiencing mental health conditions including PTSD that mitigate 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 and was discharged from USMC before enlisting in the Regular Army on 9 February 1989; 2) The applicant served in Saudi Arabia from 13 August 1990-18 April 1991; 3) The applicant was AWOL on 12 August 1991-till he was arrested by civilian authorities and returned to the military on 15 September 2015; 4) The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's court-martial. The approved sentence of a general or special court-martial is also not available for review; 5) The applicant was discharged on 5 May 2017, Chapter 3, as a result of court-martial (other) with Separation Code JJD and Reentry Code 4. His service was characterized as bad conduct. He completed 4 years, 1 month, and 17 days of net active service.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and VA's Joint Legacy Viewer (JLV) were also examined. Addition medical documentation provided by the applicant was also reviewed.

d. The applicant noted mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service prior to going AWOL. However, a review of his electronic medical record after returning from being AWOL provided evidence the applicant was engaged in behavioral health services at that time. He first engaged in behavioral health services at Ft. Bragg on 04 December 2015. He described a history of suicidal ideation with an attempt 10 years previously. However, he denied requiring any medical treatment for the attempt or engaging in any behavioral health treatment following. His current stressors at the time were legal from being AWOL for over 24 years and being in the military again. He also described poly-substance abuse after going AWOL. He was diagnosed with an adjustment problem, and he was recommended for group therapy. The applicant attended group therapy consistently, and he was seen for an intake for individual therapy on 07 January 2016. During this intake, the applicant reported that he felt he had previously taken care of his AWOL status by contacting his congressman, and he was surprised that he had been arrested for being AWOL. He reported an increase in insomnia and nightmares due to being back in a military environment and dealing with the legal consequences of being AWOL. He was endorsing minor to moderate symptoms of depression, anxiety, and PTSD at this time. He was not diagnosed with PTSD but instead problems with legal issues.

e. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition or has been awarded any service-connected disability. The applicant did provide hardcopy medical documentation from the Charleston VAMC dated 30 October 2022. This provided evidence shows that he has been diagnosed with

PTSD, Depressive Disorder, and Alcohol Abuse. There was no additional information provided on the date of the onset of these conditions.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition including PTSD while on active service, which mitigates his misconduct. There is evidence the applicant reported symptoms of depression, anxiety, and PTSD after returning from being AWOL for 24 years. Some of these symptoms were attributed to the negative consequences of his legal situation and also his experiences during combat. There was also evidence the applicant experienced suicidality after going AWOL. Also, the applicant provided evidence that he was diagnosed with PTSD, Depressive Disorder, and Alcohol Abuse by his VAMC in 2022.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions including PTSD while on active service. There is evidence the applicant reported symptoms of depression, anxiety, and PTSD after returning from being AWOL for 24 years. Some of these symptoms were attributed to the negative consequences of his legal situation and also his experiences during combat.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is sufficient evidence beyond self-report the applicant was experiencing a mental health condition including while on active service. The applicant went AWOL after being deployed. AWOL is an avoidant behavior, which can be a natural sequelae of PTSD and depression. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation at this time as the result of mental health condition or experience. However, the applicant contends he was experiencing a mental health condition or experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

2. A majority of the Board concurred with the conclusion of the medical advising official that AWOL would be a natural sequelae of PTSD and depression and found the evidence indicates it was his lengthy period of being AWOL that led to his sentence to a bad conduct discharge. A majority of the Board found relief is warranted in this case. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service for the period ending 5 May 2017 should be changed to under honorable conditions (general).

3. The member in the minority found insufficient evidence of in-service mitigating factors and, while concurring with the conclusion of the medical advising official that AWOL would be mitigated by PTSD, the lengthy period of AWOL (more than 20 years) warranted the sentence he received. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 for the period ending 5 May 2017 to show his character of service as under honorable conditions (general).

9/3/2024

X

CHAIRPERSON

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, 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. 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 3 provided that an enlisted person would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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 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.

6. 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//