

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230010144

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge. He also asks for a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs service -connection,

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. The applicant states he served honorably in Iraq. Upon returning home, he was set to follow his orders to go to Korea but faced anxiety. He did not know why he was having so much trouble until recently when he was diagnosed with post-traumatic stress disorder (PTSD) through the Department of Veterans Affairs (VA) at the time of enlistment. He had no help, and he was afraid to ask for help. He had to do research and file claims on his own after struggling for so long, and watching his family suffer from what he was going through. He had to look for help. [The applicant marked PTSD in his application and provides a VA letter reflective of service-connection for PTSD].

3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 3 October 2003. He completed training and was awarded military occupational specialty 52C, Utility Equipment Repairer.

b. He was issued orders reassigning him to the 1st Adjutant General Detachment in Korea, but he did not report. As a result, he was placed in an absent without leave (AWOL) status effective 5 May 2005, and later dropped from the rolls as a deserter. He surrendered to military authorities at Fort Sill, OK on 14 September 2005.

c. On 22 September 2005, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications 2 April 2005 to 28 April 2005 and from 5 May 2005 to 28 September 2005.

d. On 23 September 2005, the applicant consulted with counsel and was advised of the contemplated trial by court-martial for an offense (AWOL) punishable by a bad conduct or a dishonorable discharge. Following this consult, the applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions (UP) of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) chapter 10. He acknowledged the following:

(1) He was making this request of his own free will and had not been subjected to any coercion whatsoever by any person; he has been advised of the implications that are attached to it.

(2) He understood that as a result of his request he could be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate.

(3) He understood that, if his request for discharge is accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate.

(4) He unacknowledged he had been advised and understood that, as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law. He also understood that he may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge.

(5) He elected not to submit a statement and indicated he did not desire a physical evaluation prior to separation.

e. After consulting with counsel and submitted a request for voluntary discharge, he was placed on excess leave effective 23 September 2005, pending approval or disapproval of his request (excess leave through 12 December 2005).

f. On 15 November 2005, his chain of command recommended approval of his voluntary request for discharge with issuance of an under other than honorable conditions discharge.

g. On 21 November 2005, following a legal review for legal sufficiency, the separation authority approved the applicant's request for discharge and ordered him discharged under other than honorable conditions and reduced to the grade of private/E-1.

h. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 12 December 2005 under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial) in the rank of private/E-1, with an under other than honorable conditions characterization of service (Separation Code KFS and Reentry Code 4). He completed 1 year, 9 months, and 25 days of active service. He also had 139 days of lost time (22 to 28 April 2005 and 5 May to 14 September 2005).

i. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

4. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial.

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

6. MEDICAL REVIEW:

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

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 3 October 2003.
- On 22 September 2005, the applicant had court-martial charges preferred against him for being AWOL on two separate occasions. He voluntarily requested discharge in lieu of trial by court-martial, and on 15 November 2005, his command approved the request.
- The applicant was discharged on 12 December 2005, and he was credited with 1 year, 9 months, and 25 days of 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 he served in Iraq and after returning home, he was given orders to Korea. He discussed experiencing severe anxiety following the deployment as well as family problems. The applicant provided a VA rating decision letter, which showed that the applicant was found to have PTSD, but he is only able to utilize treatment services for the condition (no disability compensation award). 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. A review of iPERMS showed an award dated 9 January 2006 for a Combat Action Badge with the reason as follows: actively engaged by the enemy during an insurgent attack at Field Operations Base Marez in Mosul, Iraq (26 October 2004).

f. A review of a Disability Benefits Questionnaire (DBQ) dated 20 April 2022 clearly outlined three major deployment related traumatic events as well as the required number and intensity of symptoms to constitute a diagnosis of PTSD.

g. 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.

h. 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 at the time of the misconduct of going AWOL. The applicant discusses his deployment to Iraq, and a Combat Action Badge was awarded, substantiating the deployment and potentially mitigating experience.

(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? Yes. There is sufficient evidence, beyond self-report, that the applicant was experiencing PTSD while on active service. The DBQ evaluation provides detailed information about the applicant's trauma history and outlines the necessary symptom criteria to warrant a diagnosis of PTSD. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma and avoidance, and in accordance with liberal consideration, the basis for separation is mitigated.

BOARD DISCUSSION:

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. 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.
 - b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Given this mitigation, the Board determined that his service did not rise to the level required for an honorable characterization (given his AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 amending the applicant a DD Form 214 for the period ending 12 December 2005 to show his Character of Service: Under Honorable Conditions (General).

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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 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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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. 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. 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.

6. 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, 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//