

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011144

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general), and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 28 August 2023
- self-authored statement, 22 August 2023
- correspondence from Command to Parent, 8 July 1997
- Pay Inquiry Form, 7 November 1997
- separation packet
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 June 2000
- medical documentation starting 2 December 1996 to 4 November 1998
- character reference, from Retired Command Sergeant Major [REDACTED] 16 August 2023
- character reference, from [REDACTED] 22 August 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 AR20170010792 on 27 April 2020.

2. The applicant states, in effect, he is requesting an upgrade of his discharge because of the emotional and physical injuries he suffered as a servicemember. Being a paratrooper military police (MP) has left him suffering from back, knee, elbow pain from the jumps, tinnitus, and an eye injury.

a. During his enlistment he suffered a broken thumb on his right hand, which is still out of place, he has severe tendonitis from his elbow to wrist due to overuse of his left side arm because of his right-side injuries. His chain of command was the reason he suffered from medical issues. He has post-traumatic stress disorder (PTSD) because of

mistreatment from a supervisor and a brother in uniform. He believes if he had received medical attention he would not suffer from physical pain, emotional pain, and distrust issues he faces today.

b. He requests that the Board read the voluntary statement he submitted, detailing the actions, physical and emotional abuse by the hands of his superior officers. He felt while serving that no one heard him. He did not have issues or problems prior to his chain of command issues. He says although he went absent without leave (AWOL) his chain of command knew he was working at a club down the street from the installation. The chain of command never sent anyone to pick him up or notified his mother of his absence; he believed they were happy he was not there.

c. He loves his country and his duties as an MP were overshadowed by the callousness of his chain of command. He is wanting to receive treatment for the injuries suffered both emotional and physical.

3. On his DD Form 149, he notes PTSD, other mental health, and reprisal are related to his request.

4. The applicant enlisted in the Regular Army on 19 November 1996, he was awarded military occupational specialty 11B (Infantryman), and the highest rank he attained was private/E-2.

5. A DD Form 553 (Deserter/Absentee Wanted by the Armed Forces) shows the applicant went AWOL on or about 29 November 1998. He surrendered to military authorities on or about 4 March 1999.

6. Court-martial charges were preferred against the applicant on 16 March 1999, for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 29 November 1998 and remaining AWOL until on or about 4 March 1999.

7. On the same date, the applicant consulted with legal counsel and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected to submit a statement in his own behalf stating:

(1) He wrote a statement to clarify his AWOL status. He had issues with his pay and after 10 months it was resolved. Numerous issues within his chain of command were happening with platoon sergeants, squad leaders, and team leaders. With his third platoon sergeant, he was on profile for medical issues and was not to use his wrist and was pulling out radios, mopping, buffing, and various details. When he said something, he was shown how to complete various tasks with his other arm by other noncommissioned officers.

(2) He requested to see his chain of command, and nothing happened from his request. He received a new platoon sergeant and was able to get his cast off and started therapy appointments and pending a specialist appointment for his lumps on the top of his hand. After his appointment, he was told he had tendonitis in his wrist to his elbow and he was overworking his hand because of his previous cast. With a cast on his left hand and a soft cast on his right, he started to try to get discharged due to medical reasons. His chain of command did not support it and wanted to send him to the field, although he had therapy appointments to attend. He was made to believe he would attend therapy and still be in the field; however, was told later he was unable to attend therapy while in the field. He said they were disregarding his medical appointments.

(3) His command told him he would leave his platoon and he ended up receiving another Article 15 for missing formation. He was waking up daily with headaches, he reached his limit, and he could not deal with the mental or physical abuse anymore.

8. On 1 October 1999, the applicant's commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and issuance of a UOTHC discharge.

9. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 18 December 1999 and further directed the applicant receive an UOTHC discharge, with reduction to the lowest enlisted grade of E-1.

10. The applicant's DD Form 214 shows he was discharged on 28 June 2000, under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, in the grade of E-1. He received an UOTHC characterization of service. He was credited with 3 years and 4 months of net active service with lost time from 1 October 1998 to 5 October 1998 and 29 November 1998 to 3 March 1999.

11. The applicant provides:

a. A pay inquiry document, showing his errors regarding his basic allowance for quarters.

b. Medical documentation dated from 2 December 1996 to 4 November 1998 summarizing medical notes on his wrist, tendonitis, eye injury, foot issues, also his back, and knees issues as a result of his paratrooper jumps. His migraine, depression, insomnia issues, gastrointestinal issues, and his hand injuries.

c. A character reference from Retired Command Sergeant Major [REDACTED] summarizing the applicant's time while serving as being deprived of basic leadership guidance and assistance from his chain of command. Referencing the dates of forms not corresponding with actions that took place and missing signatures. He states the leadership/chain of command should have cared for the applicant but also all the Soldiers within their command. He visited the applicant's unit to understand the situation and extend assistance; however, he was not allotted time, information, or direction to assist in the matter. He is requesting the applicant's record be upgraded to allow him to seek the support he should have received.

d. A character reference from [REDACTED], the mother of the applicant, states the applicant is suffering from pain, stress, and depression of over more than 20 years. When he joined the Army he was happy and looking forward to a law enforcement career. He encountered pay discrepancies and issues with his child support and spent time dealing with these issues and then he was injured. His wrists were injured, and he started having knee and back pain. He was humiliated and mistreated during this time when he was injured. She never received a letter from the chain of command, nor a phone call. She was glad he left instead of hurting anyone and she was afraid for him. He is now in an unwarranted cycle in his life, suffering from physical and emotional pain, anger, and depression. She is asking the Board to right the wrongs of what was done to the applicant, adding he would have had an excellent career because he was excited to work in his desired field.

12. On 27 April 2020, his request for discharge upgrade was denied by the ABCMR, the Board found that relief was not warranted. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to

overcome the misconduct and determined the character of service the applicant received upon separation was not in error or unjust.

13. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge from the Soldier to avoid a trial by court-martial. An UOTH character of service is normally considered proper.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 28 May 2000 discharge characterized as under other than honorable conditions and a referral to the Disability Evaluation System (DES). On his DD form a49, he has indicated that PTSD, Other mental health conditions, and Reprisal/whistleblower status are issues related to his requests. He states:

"I am requesting an upgrade to my discharge because of the emotional. and physical injuries that I suffered as a service member. As a Paratrooper MP, I am suffering from back, knee, and elbow pain from the jumps. I am also suffering from tinnitus, and an eye injury from flash bangs during training. During my enlistment I also suffered a broken thumb and wrist on my right hand, the thumb is still out of place.

I suffered PTSD because of the mistreatment at the hands of someone that was a supervisor and a brother in uniform. I was very angry and feel that had I received the medical attention as prescribed by the doctors I would not still be in physical pain and be suffering from some of the emotional and distrust issues that I face today. My love for my country, and my duties as an MP were overshadowed by the callousness of the chain of command.

I have not been treated for any of these issues since leaving the Army. I am asking that you please consider upgrading my discharge to General/Under Honorable

Conditions and restoring all of my rights. I also need to be treated for all my injuries, emotionally and physical.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 19 November 1996 and was discharged on 28 May 2000 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Discharge in Lieu of Trial by Court-Martial. The DD 214 shows lost time under 10 USC § 972 from 1-5 October 1998 and 29 November 1998 thru 3 March 1999 (145 days). There were no periods of service in a hazardous duty pay area.

d. Contemporaneous medical documentation shows the applicant was treated for plantar fasciitis, a viral syndromes, conjunctivitis, a right hand injury, and bilateral wrist pain. The documents do not show that any of these conditions required significant periods of treatment. There are no documented mental health encounters.

e. In November 1998, the applicant’s commander notified him of the initiation of action to separated him for misconduct under paragraph 14-12b or AR 635-200:

“The reasons for my proposed action are: On 6 and 26 October 1998, you participated in urinalysis testing. Both samples came back positive for marijuana which is a controlled substance. During the past six months, you have received four Article 15s as follows: 29 Oct 98 for use of marijuana and being absent without leave for five days; 6 Oct 98 for two counts of failure to go to your appointed place of duty; 5 Aug 98 for obtaining Government services under false pretenses (unauthorized telephone calls); and 24 Jun 98 for failure to go to your appointed place of duty.

You have been counseled extensively concerning your misconduct and have failed to overcome your deficiencies or become a productive soldier. I feel you have no potential for continued service in the military and therefore recommend your immediate separation from the U.S. Army”

f. A Charge Sheet (DD form 458) shows the applicant was charged with absent without leave (AWOL) from 29 November 1998 thru 4 March 1999. The Report of Return of Absentee (DD Form 616) show the applicant surrendered to military authorities at Ft. Bragg, NC.

g. On 10 March 1999, the applicant voluntarily requested discharge in lieu of trial by court-marital under chapter 10 of AR 635-200.

h. The commander of the United States Army Garrison, Fort Knox, Kentucky approved his request on 18 December 1999. He directed the applicant be discharged with an under other than honorable characterization of service and be reduced in rank to Private E1 prior to the execution of the discharge.

i. There are no encounters in AHLTA or in JLV.

j. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violation; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge.

k. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral to the Disability Evaluation System is warranted.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has PTSD and other mental health conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts these mental health conditions were present while he was in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 physical and behavioral health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the

conclusion of the medical advising official regarding his misconduct not being mitigated by a behavioral health condition and there being no basis for his referral to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20170010792 on 27 April 2020.

12/19/2024

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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. Section 1556 of Title 10, U.S. 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.

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 ABCMR may, in its discretion, hold a hearing. 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.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."

4. AR 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

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.

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 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//