

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230011204

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge, and change to his narrative reason for separation to “Secretarial Authority.”

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief in support of application
 - Exhibit 1: Self-authored letter
 - Exhibit 2: In-service personnel record
 - Exhibit 3: Army Board for Correction of Military Records (ABCMR) record of proceedings
 - Exhibit 4: In-service medical documents
 - Exhibit 5: Absent without leave (AWOL) interview sheet
 - Exhibit 6: DD Form 214 (Report of Release or Discharge from Active Duty)
 - Exhibit 7: Army Discharge Review Board (ADRB) record of proceedings
 - Exhibit 8: Veterans Affairs (VA) decision letter
 - Exhibit 9: Memorandum from Under Secretary of Defense; subject: Guidance to Military Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) Regarding Equity, Injustice, or Clemency Determinations, dated 25 July 2018
 - Exhibit 10: Digital image from Department of Defense (DoD) Sexual Assault Prevention and Response (SAPR) - Mission and History
 - Exhibit 11: Memorandum from the Deputy Assistant Secretary of Defense (Force Health Protection and Readiness); subject: DoD Care for Victims of Sexual Assaults, dated 10 February 2004
 - Exhibit 12: DoD Directive Number 6495.01; subject: SAPR Program, dated 23 January 2012
 - Exhibit 13: Memorandum from Office of the Under Secretary of Defense; subject: Clarifying Guidance to Military DRBs and BCM/NRs Consideration Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017

- Exhibit 14: Clinical note from Staff Psychologist P_S-F_
- Exhibit 15: VA medical progress notes
- Exhibit 16: Social Security Administration (SSA) letter
- Exhibit 17: Character reference letter from C_P_
- Exhibit 18: Character reference letter from M_C-Y_

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR2000050031 on 17 May 2001.

2. Applicant states:

a. He enlisted in the military with the goal of finding a full-time job and gaining independence, as well as pursuing a career in the Army. After completing basic training, he attended Advanced Individual Training for combat medic school. He reported to his first duty station in April 1981. His duties included running the aids station during sick call, as well as various other tasks such as motor pool and vehicle maintenance.

b. The first traumatic event he experienced was in 1981, when he received a call for an unresponsive infant while working at the dispensary emergency room. Him and another Soldier arrived at the house, but the baby was not breathing, despite several minutes of Cardiopulmonary Resuscitation. The baby had already been dead for several hours. They were told to tag the baby and put him into a body bag for transport to the hospital morgue, where they saw several dead bodies and body parts in the morgue.

c. The second traumatic event occurred in 1981, when a staff sergeant entered his room while he was asleep and began touching his genital area. Upon waking up and confronting him, he laughed and left the room. This disturbing event repeated several days later, prompting him to question how he gained access to his locked room. When the applicant threatened to report him to the first sergeant, he arrogantly dismissed his claims. He was constantly living in fear.

d. The third traumatic event occurred in 1982. While walking past a club on base, a man suddenly emerged from a dark area and tackled him from behind. He proceeded to pull down the applicant's sweatpants and underwear and climbed on top of him. He was able to kick him and escape. He ran to his barracks and alerted the duty Soldier, requesting him to call the military police. He refused and instead contacted leadership. Leadership downplayed the situation and advised him not to report the incident because it would not look good when a man is accusing another man of rape.

e. After the second traumatic event, he started to drink heavily to numb the pain, he could not sleep, and function and even though he was going through all these physical and mental changes he continued to perform his duties. He was always sad and depressed. He soon started using Hashish and drinking alcohol every day. He had no one to talk to and get help, and this went on for the next 12 months. He was in a complete downward spiral with no end in sight, and it got compounded by additional traumas and nightmares, including vivid dreams where he would wake up screaming.

f. Drinking and marijuana continued to be his outlet to cope, he was always in fear. He got stopped by a civilian police officer and was arrested for possession of marijuana and a handgun. When he returned to the barracks, he told his first sergeant that he had a drinking and drug problem, thinking he would get much-needed help. Everything collapsed, he was given an Article 15 and demoted to E-3. He was ordered to report to the Fort Hood, TX, Army Hospital for on the job training. One day, he saw a Soldier that looked exactly like his attacker in Germany. He had a severe panic attack; he could not wait to get out of there. He went AWOL, leaving everything behind.

3. Counsel states:

a. The applicant's commitment to serving his country was cut short after he was the victim of not one, but two separate military sexual assaults and was re-traumatized by a defective process that did not provide the procedures and protections that are now available under updated victim-centric policies. The impact of the military sexual trauma (MST) led to depression, anxiety, and documented physical pain. The applicant would keep the horror of what had happened to him inside for years; he has seen and continues to see multiple mental health professionals to process what happened to him during his time in service. The behavior that led to the discharge was a direct result of the MST he suffered, and which evolved into full-blown post-traumatic stress disorder (PTSD). Indeed, in January 2002, the VA granted him 100 percent (%) permanent and total disability, based exclusively on PTSD. The Board should find that the misconduct is sufficiently mitigated and recommend upgrading the discharge.

b. The applicant's documented mental health condition should be seen as a mitigating factor in the misconduct. Such misconduct during service was directly attributable to the in-service MST, which led to PTSD. His UOTHC discharge is an injustice because his acute stress reaction - going AWOL while being convinced, he was to blame for the violent actions of his assailants - was a major mitigating factor in the discharge.

4. The applicant enlisted in the Regular Army on 5 November 1980. He reenlisted on 20 October 1983. The highest grade he attained was E-4.

5. DA Form 4187 (Personnel Action) dated 10 February 1984, shows the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 16 January 1984 and his punishment included reduction in grade to E-3. The applicant's record is void of the record of proceedings containing the specific facts and circumstances surrounding his UCMJ violations.

6. On 29 February 1984, the applicant was reported AWOL and remained absent until he surrendered to military authorities on 7 January 1986.

7. On 7 January 1986, the applicant voluntarily declined a separation medical examination.

8. Personnel control facility interview sheet dated 8 January 1986, shows the applicant stated he went AWOL due to personal problems with his family and unit, and that he spoke to his supervisor prior to going AWOL to solve his problems.

9. Court-martial charges were preferred against the applicant on 10 January 1986, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from 29 February 1984 through 7 January 1986.

10. On 10 January 1986, 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 UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions 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 declined to submit a statement in his own behalf.

11. The applicant's commander recommended approval of the applicant's request for discharge. The commander opined, the applicant had no motivation for continued service, and would not respond to either counseling or rehabilitation.

12. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 24 February 1986, and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

13. The applicant was discharged on 27 March 1986, in the rank/grade of private/E-1. He was credited with 3 years, 6 months, and 15 days of net active service this period with 678 days of lost time. His DD Form 214 contains the following entries in:

- Item 24 (Character of Service) – UOTHC
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, Chapter 10
- item 26 (Separation Code) – KFS
- item 27 (Reenlistment Code) – 3, 3B, 3C
- item 28 (Narrative Reason for Separation) – For the Good of the Service - in Lieu of Court-Martial

14. Additionally his DD Form 214 shows he was awarded or authorized the:

- Expert, M-16 Rifle Badge
- Sharpshooter, Hand Grenade Badge
- Good Conduct Medal
- Army Commendation Medal
- Army Service Ribbon
- Overseas Service Ribbon

15. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

16. The applicant petitioned the ADRB requesting upgrade of his UOTHC discharge. On 15 May 1996, the Board voted to deny relief and determined his discharge was both proper and equitable.

17. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 17 May 2001, the Board voted to deny relief and determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

18. In the processing of this case, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Police Reports pertaining to the applicant.

19. The applicant provides the following (provided in entirety for the Board):

a. In-service medical documents that show he was treating for various medical illnesses and injuries, including headaches and urination issues.

b. A VA decision letter that shows his evaluation rating of PTSD was increased to 100 percent.

c. A letter from a VA psychologist that shows he was evaluated and diagnosed with chronic PTSD in 1997. The attending psychologist notes the applicant experienced numerous traumatic experiences during his military service, including non-combat related traumas that occurred while performing his military duties.

d. A letter from the SSA that shows he is receiving disability benefits.

e. Two character reference letters that speak to his strong character and detail how the traumatic events during his military service impact his mental health.

20. 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.

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

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge and change to his narrative reason for separation to "Secretarial Authority." He contends an undiagnosed mental health condition, PTSD, as a result of MST and other traumatic events, 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 5 November 1980 and reenlisted on 20 October 1983.
- On 29 February 1984, the applicant was reported AWOL and remained absent until he surrendered to military authorities on 7 January 1986.
- Court-martial charges were preferred against the applicant on 10 January 1986, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was

charged with one specification of AWOL from 29 February 1984 through 7 January 1986.

- Applicant was discharged on 27 March 1986, under the provisions of Army Regulation (AR) 635-200, Chapter 10, For the Good of the Service - in Lieu of Court-Martial. His service was characterized as UOTHC with separation code – KFS and reenlistment code – 3, 3B, 3C.

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 via his self-authored statement and his attorney's legal brief experiencing multiple traumatic events during the course of his enlistment, including a dead baby, a fellow Soldier's death with his face partially missing, sexual molestation, and an attempted rape. Due to the period of service no active-duty electronic medical records were available for review, thus, there was insufficient evidence the applicant was diagnosed with PTSD, MST, or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and indicates the applicant initially engaged in mental health treatment following the recommendation of a clinician who completed a C and P examination with the applicant in September 1997. The applicant is 100% service connected for PTSD. He has been treated by the VA due to his PTSD symptoms since October 1997 and has participated in individual and group therapy as well as medication management.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he experienced MST, resulting in PTSD, at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced two incidents of MST, resulting in PTSD, while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserts a mitigating BH experience, PTSD as a result of MST and this is documented in his VA treatment records. There is no in-service documentation of his MST, mental health diagnosis, or treatment.

g. As there is an association between PTSD and avoidant behavior, there is a nexus between his experience of MST and resultant PTSD and his offense of being AWOL.

h. Nonetheless, the applicant contends he developed PTSD as a result of MST and, per Liberal Consideration, his contention is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical advisory the Board considered the advising official findings that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted there is a nexus between his experience of MST and resultant PTSD and his offense of being AWOL.

2. The Board took into consideration the advising official recommendation based on liberal consideration for clemency. However, the Board notwithstanding the advising opine determined there is insufficient evidence of mitigating factors to overcome the misconduct of being AWOL for over three (3) years. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. During deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct his record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 27 March 1986 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 801105 UNTIL 831019
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 an upgrade of his under other than honorable conditions (UOTHC) discharge and change to his narrative reason for separation to "Secretarial Authority."

[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):

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 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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "KFS" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for the good of the service – in lieu of court-martial.
4. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.
5. 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

6. The Secretary of Defense directed the Service DRBs and Service BCM/NRs, on 3 September 2014, 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

8. 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, 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//