

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011639

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded. Additionally, he requests a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge)
- Service Documents
- Service Medical Documents
- Service Certificates
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Representative Letters, dated 19 July-13 August 1985
- City Proclamation
- Medical Documents

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 his current discharge does not reflect his honorable, 2 years and 10 months of service. He notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 4 June 1986 for 3 years. His military occupational specialty was 19K (M1 Abrams Armor Crewmember).
4. The applicant provides a service medical document that shows he was admitted to the hospital on 13 July 1984 and discharged on 18 July 1984, with a final diagnosis of 1st and 2nd degree burns of face and left upper extremity. He sustained burns when the tank, on which he was sitting exploded on 12 July 1984.

5. The applicant served in Germany from 3 December 1985 through 15 December 1986.
6. The applicant was absent without leave (AWOL) on 16 December 1986 and dropped from the rolls on 14 January 1987.
7. Court martial charges were preferred against the applicant on 14 January 1987. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 16 December 1986 and did remain so absent.
8. The applicant was present for duty on 2 February 1987. He surrendered to civilian authorities, and he was returned to military control.
9. The Medical Statement of Option, dated 4 February 1987 shows the applicant did not desire a separation medical examination.
10. A Personnel Control Facility Information Sheet, dated 4 February 1987, shows the applicant did not request a physical and did not want to stay in the service. His reason for going AWOL was the severe family problems that arose during his emergency leave from Germany. He had been to the Judge Advocate General, the chaplain, and applied for a compassionate reassignment, and he talked to his Congressman. The unit did not want the applicant back and no other charges were pending.
11. An updated DD Form 458 shows court martial charges were preferred against the applicant on 6 February 1987. He was charged with AWOL from on or about 16 December 1986 until 2 February 1987.
12. The applicant consulted with legal counsel on 6 February 1987, 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 UOTHC discharge and the procedures and rights that were available to him.
  - a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of a dishonorable discharge.
  - b. He elected not to submit statements in his own behalf.

13. The applicant's commander recommended approval of his request for discharge on 20 February 1987. In the commander's opinion the applicant was not motivated for continued service and would not respond to either counseling or rehabilitation. The administrative burdens involved in the court martial and possible confinement were not considered warranted in view of the nature of the offense.

14. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 18 March 1987. He directed the applicant's reduction to the lowest enlisted grade with the issuance of an DD Form 794A (UOTHC Discharge Certificate).

15. A Letter of Debarment, dated 3 April 1987, shows the applicant was discharged in absentia.

16. The applicant was discharged on 3 April 1987. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service- in lieu of trial by court-martial with Separation Code KFS and Reenlistment Code 3/3B/3C. His service was characterized as UOTHC. He completed 2 years, 8 months, and 12 days of net active service. He had lost time from 16 December 1986 to 1 February 1987. His awards include the Army Service Ribbon and the Army Commendation Medal.

17. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

18. The applicant provides:

a. Service documents and a copy of his DD Form 214 as discussed above.

b. Service certificates, an Army Achievement Medal, dated 30 August 1985 shows the applicant displayed affirmative thinking in accomplishing given task; and an Army Commendation Medal, dated 31 October 1985 shows he earned the respect of his peers and superior's and reflects distinct credit on himself and the U.S. Army.

c. Representative letters, dated 19 July-13 August 1985 show the applicant sought congressional assistance, at that time.

d. A City Proclamation, dated November 2014 shows the City of Rochester, MN, is a Purple Heart City.

e. Medical documents show generalized Anxiety Disorder and PTSD.

19. 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.

20. MEDICAL REVIEW:

a. The applicant requests upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related to PTSD.

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 in the Regular Army on 4 June 1986.
- The applicant provides a service medical document that shows he was admitted to the hospital on 13 July 1984 and discharged on 18 July 1984, with a final diagnosis of 1st and 2nd degree burns of face and left upper extremity. He sustained burns when the tank, on which he was sitting exploded on 12 July 1984.
- The applicant was absent without leave (AWOL) on 16 December 1986 and dropped from the rolls on 14 January 1987.
- Court martial charges were preferred against the applicant on 14 January 1987. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 16 December 1986 and did remain so absent.
- The applicant was present for duty on 2 February 1987. He surrendered to civilian authorities, and he was returned to military control.
- An updated DD Form 458 shows court martial charges were preferred against the applicant on 6 February 1987. He was charged with AWOL from on or about 16 December 1986 until 2 February 1987.
- The applicant consulted with legal counsel on 6 February 1987. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10
- The applicant's commander recommended approval of his request for discharge on 20 February 1987. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 18 March 1987.
- The applicant was discharged, in absentia, on 3 April 1987. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is a Medical Record/Narrative Summary (Clinical Resume), that shows the applicant was

hospitalized from 13 July 1984 to 18 July 1984 with 1<sup>st</sup> and 2<sup>nd</sup> degree burns of his face and left upper extremity secondary to the tank he was sitting on exploded. He was treated over the course of 5 days and discharged with instructions to return to the Surgical Clinic in one week for re-evaluation. No military BH records were provided for review.

d. A review of JLV shows the applicant is not receiving SC disability but does have a PTSD diagnosis, rendered by a VA provider. Encounter note dated 5 February 2024 shows the applicant underwent a PTSD evaluation and was found to meet diagnostic criteria for PTSD secondary to the tank explosion. He reported that in addition to his own physical injuries, he saw other service-members severely burnt. He reported that after the incident and onset of PTSD symptoms, he made multiple requests to be reassigned away from tank duty. However, he was reportedly informed that he would have to continue working on tanks for the rest of his military career. He further reported that around the same time his grandmother died, and while on leave a series of miscommunication/misunderstanding between him and his command resulted in his administrative separation. He was diagnosed with PTSD and scheduled for outpatient BH treatment. Records show the applicant has remained in treatment, to date, with fair results.

e. The applicant also provided medical records from his civilian provider that shows he was diagnosed with PTSD on 6 October 2022, related to the tank explosion. Records also show a diagnosis of GAD, but records do not appear to associate the GAD diagnosis to military service.

f. The applicant requests upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to PTSD. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service, however, military medical records show the applicant was hospitalized with 1<sup>st</sup> and 2<sup>nd</sup> degree burns after his tank exploded. Post-service records show the applicant diagnosed with PTSD secondary to the tank explosion, and GAD that does not appear to be related to military service. As there is an association with PTSD and avoidant behavior, there is a nexus between the applicant's misconduct characterized by AWOL and his diagnosis of PTSD, such that the misconduct of AWOL is mitigated by the disorder.

g. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct.

## h. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is diagnosed with PTSD secondary to a tank explosion during military service.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service, however, military medical records show the applicant was hospitalized with 1<sup>st</sup> and 2<sup>nd</sup> degree burns after his tank exploded. Post-service records show the applicant diagnosed with PTSD secondary to the tank explosion, and GAD that does not appear to be related to military service. As there is an association with PTSD and avoidant behavior, there is a nexus between the applicant's misconduct characterized by AWOL and his diagnosis of PTSD, such that the misconduct of AWOL is mitigated by the disorder.

**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. 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. 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 reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that in view of his AWOL, his service did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade

did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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's DD Form 214 ending on 3 April 1987 to show:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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, 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 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).
  - 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 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which 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 Soldier or where required, after referral, until final action by the court-martial convening authority.
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 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 PTSD;



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.

5. 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//