

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011680

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Diagnostic Impression-Evaluation Status Report for Post-Traumatic Stress Disorder (PTSD), 12 June 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 AR20120015737 on 19 March 2013.

2. The applicant states he is requesting an upgrade due to his PTSD from active duty. He believes the PTSD caused his drug and alcohol abuse which led him to go absent without leave (AWOL). His senior enlisted leader, Sergeant First Class (SFC) L__ had a racial grudge against him and other personnel. He denied his temporary duty (TDY) to advanced school for stinger missile systems and used the orders for himself. He was forced to dry shave and as a black man that caused really bad facial bumps and made him bleed. SFC L__ embarrassed him in every way he could. He had really good evaluations until SFC L__ showed up at the command. The applicant was determined to get out of the Army the fastest way possible although he initially planned on making the Army a career.

3. The applicant provides a Diagnostic Impression-Evaluation Status Report for PTSD dated 12 June 2023, which states the applicant was rated with a clinical diagnosis of acute stress disorder, dysthymic disorder, mixed anxiety and depressive disorder, and anxiety disorder based on his clinical evaluations. The full evaluation is available for review by the Board.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 24 April 1986.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in Block 21 (Time Lost) he was AWOL from 23 July 1989 through 19 February 1990.

c. Three DA Forms 4187 (Personnel Action) show the applicant's duty status changed as follows:

- 23 July 1989 – assigned, not joined to AWOL
- 19 February 1990 – confined to present for duty (PDY)
- 19 February 1990 – dropped from rolls (DFR) to PDY

d. On 21 February 1990, the applicant signed a Statement of Option which indicated he did not desire a separation medical examination.

e. On 23 February 1990, the applicant provided a statement wherein he knowingly, willingly, and voluntarily declared that he was AWOL from the U.S. Army from 23 June 1989 [sic] to 19 February 1990.

f. A DD Form 458 (Charge Sheet) shows on 23 February 1990, court-martial charges were preferred on the applicant for one specification of absenting himself without authority from on or about 23 July 1989 to on or about 19 February 1990.

g. On 23 February 1990, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

h. On 9 April 1990, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be separated with an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

i. On 18 June 1990, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 6 months, and 29 days of active service with 212 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service In Lieu of Court-Martial," with reentry code 3.

5. On 1 September 1999, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 19 March 2013, the ABCMR rendered a decision in Docket Number AR20120015737. The Board noted the applicant's records show he was AWOL from 23 July 1989 until 19 February 1990 and charges were pending against him for being AWOL. He was convicted by civil authorities for assault. There was no evidence in his record, nor did he submit sufficient evidence to show he was suffering from a drug addiction while he was in the Army. While he admitted that he committed the offense which led to his discharge, it is not sufficiently mitigating to warrant an upgrade of his discharge.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-200), an individual 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

9. 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.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge. He

contends he experienced PTSD that mitigates his misconduct. 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 in the Regular Army on 24 April 1986; 2) The applicant was found to be AWOL from 23 July 1989-19 February 1990; 3) The applicant was discharged on 18 June 1990, Chapter 10- "For the Good of the Service In Lieu of Court-Martial." His characterization of service was under other than honorable conditions. He completed 3 years, 6 months, and 29 days of active service with 212 days of lost time; 4) On 1 September 1999, the Army Discharge Review Board (ADRB) reviewed and denied the applicant's request for an upgrade in his discharge; 5) On 19 March 2013, the ABCMR reviewed and denied the applicant's request for an upgrade in his discharge.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian medical records provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD while on active service.

d. A review of JLV provided evidence the applicant has been engaged with the VA for assistance with homelessness and some medical treatment for physical concerns starting in 2012. There is insufficient evidence the applicant has been formally diagnosed with a mental health condition by the VA, and there is no evidence the applicant has been identified as experiencing a service-connected mental health condition and does not receive any service-connected disability. Lastly, there was insufficient evidence the applicant was exposed to combat or a potentially traumatic event, while on active service.

e. The applicant also provided hardcopy civilian medical documentation from a doctorate-level psychologist located in Huntsville, AL, dated 14 August 2023. The applicant was provided a clinical diagnostic assessment using multiple psychological assessments, some specifically for PTSD. The applicant was found to meet criteria for Acute Stress Disorder, Dysthymic Disorder, Mixed Anxiety and Depressive Disorder, and Anxiety Disorder. Acute Stress Disorder is specifically a condition which occurs within the first month of a potentially traumatic event, which is different from PTSD. The applicant was not diagnosed with PTSD. In addition, there was no discussion or review of the onset of the applicant's current reported symptomatology in 2023 or if it was related to his active service.

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

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct. There is insufficient evidence the applicant has been diagnosed with PTSD, but there is evidence the applicant has been diagnosed with other non-service-connected mental health conditions in 2023.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. He has provided evidence that he has been diagnosed with other mental health conditions in 2023, but there is insufficient evidence these conditions are related to his military service or were present during his active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 medical review, the Board concurred with the advising official finding insufficient evidence the applicant has been diagnosed with PTSD, but there is evidence the applicant has been diagnosed with other non-service-connected mental health conditions in 2023.

2. The Board determined based on the opine there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The Board carefully considered the evidence provided by the applicant stating he has been

diagnosed with other mental health conditions in 2023. However, the under liberal consideration, the Board agreed there is insufficient evidence these conditions are related to his military service or were present during his active service. The applicant did not provide any post service achievements or character letters of support for the Board to weigh a clemency determination. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. Therefore, the Board denied relief.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, 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.

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 found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20120015737 on 19 March 2013.



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. Army Regulation 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, it states in paragraph 2-11 that 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member’s current enlistment or current period of service with due consideration for the member’s age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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 post-traumatic stress disorder (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, 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, on 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. 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.

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 based on 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.

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//