

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011806

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable 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 July 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 January 1993
- Medical Documentation, 24 April 2015

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 has been a true man and would like his characterization to be upgraded to honorable and to receive benefits from his service in Desert Storm. The applicant notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 12 February 1976, for a 3-year period. He was honorably relieved from active duty, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) Chapter 2 (Separation of Enlisted Personnel) on 2 February 1979, in the grade of specialist four (SP4)/E-4. His DD Form 214 (Report of Separation from Active Duty) confirms he was awarded the military occupational specialty of 13B (Field Artillery Crewman), he received a separation program designator of LBK and reenlistment code of RE-1B. He served 2 years, 11 months, and 23 days net active service.
4. He reenlisted in the Regular Army on 17 April 1979, for a 4-year period in the grade of specialist/E-4. He reenlisted on 22 March 1983, and again on 21 March 1986. A DA Form 1695 (Oath of Extension of Enlistment) shows on 24 June 1987, he extended

for an additional 3 months to complete an overseas tour. He conducted his fourth reenlistment on 17 July 1990.

5. He served in military occupational specialties 13B (Cannon Crewmember) and 88M (Motor Transport Operator), the highest rank he attained was sergeant/E-5.

6. The applicant's DA Form 2-1 (Personnel Qualification Record) shows:

- he went absent without leave (AWOL) on or about 4 June 1985 to on or about 7 June 1985, a total of 4 days.
- he went AWOL on or about 16 September 1992 to on or about 5 November 1992, a total of 51 days.
- he served in a danger pay area in Southwest Asia, Saudi Arabia, on 23 January 1991 to 28 March 1991 as a Heavy Vehicle Driver

7. On 20 August 1992, the applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed place of duty on or about 15 June 1992 and on or about 26 June 1992, and for going AWOL on or about 15 July 1992 and remaining AWOL until on or about 13 August 1992. His punishment imposed was reduction to the grade of E-4, forfeiture of \$608.00 per month for two months, and 45 days of extra duty.

8. The applicant's duty status changed from present for duty to AWOL effective on 16 September 1992 and from AWOL to dropped from the rolls effective on 16 October 1992.

9. A DA Form 4187 (Personnel Action) shows on 6 November 1992 the applicant was apprehended by civilian authorities and returned to military control.

10. Court-martial charges were preferred against the applicant for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 16 September 1992 until on or about 6 November 1992.

11. The applicant consulted with legal counsel on 13 November 1992, and executed a written request for discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). 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 under other than honorable conditions 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 not to submit a statement in his own behalf.

12. On 17 December 1992, the applicant's immediate and intermediate commander's recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 7 January 1993. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

14. Orders 3-2, dated 12 January 1993, reduced the applicant from sergeant/E-5 to private/E-1.

15. The applicant was discharged on 25 January 1993, under the provisions of AR 635-200, Chapter 10, for the good of service, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code 3. He was credited with 13 years, 7 months, and 15 days of net active service, with lost time from 4 June 1995 to 7 June 1995 and 16 September 1992 to 5 November 1992. He was awarded or authorized the:

- Southwest Asia Service Medal (1 bronze star)
- Army Commendation Medal
- Army Achievement Medal (2nd oak leaf cluster)
- Army Good Conduct Medal (4th award)
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (3rd award)
- Sharpshooter Marksmanship Qualification Badge (M-16 Rifle)
- Parachutist Badge
- Air Assault Badge
- Driver and Mechanic Badge – Wheeled
- Kuwait Liberation Medal

16. The applicant provides 8 pages of medical documentation specifically highlighting his service in Desert Storm, stating he had reported witnessing charred bodies, trucks being blown up, a lot of death, and body parts laying on the roadside. He is triggered by smells and has vivid dreams of the events in Desert Storm. He reported he can never forget the smell of the stench of bodies. He stated he went through numerous jobs, where he would work a few days and then get deeply depressed. He also, isolates himself at home in his bedroom. Additionally adding, he previously sought treatment for PTSD from a psychiatrist and therapist around 1994. He was diagnosed with PTSD on 24 April 2015.

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

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 12 February 1976 and reenlisted on 17 April 1979, 22 March 1983, and 21 March 1986. On 24 June 1987, he extended for an additional 3 months to complete an overseas tour. He conducted his fourth reenlistment on 17 July 1990.
- Applicant served in a danger pay area in Southwest Asia, Saudi Arabia, on 23 January 1991 to 28 March 1991 as a Heavy Vehicle Driver.
- On 20 August 1992, the applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for failing to go to his prescribed place of duty on or about 15 June 1992 and on or about 26 June 1992, and for going AWOL on or about 15 July 1992 and remaining AWOL until on or about 13 August 1992.
- Court-martial charges were preferred against the applicant for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 16 September 1992 until on or about 6 November 1992.
- Applicant consulted with legal counsel on 13 November 1992, and executed a written request for discharge for the good of the service under the provisions of

AR 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service).

- Applicant was discharged on 25 January 1993, under the provisions of AR 635-200, Chapter 10, for the good of service, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code 3. He was credited with 13 years, 7 months, and 15 days of net active service, with lost time from 4 June 1995 to 7 June 1995 and 16 September 1992 to 5 November 1992.

b. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, medical documentation, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant states he has been a true man and would like his characterization to be upgraded to honorable and to receive benefits from his service in Desert Storm. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides medical documentation from December 2014 to May 2015 indicating he participated in specialized treatment for PTSD. The documentation indicates the applicant met diagnostic criteria for PTSD and links his symptoms specifically to his service in Desert Storm, where the applicant reported witnessing "charred bodies, trucks blown up, a lot of death, and body parts laying on the roadside". The applicant is not service connected, likely due to the characterization of his discharge. The VA electronic medical record indicates the applicant initiated services with the VA in December 2014, due to requiring housing assistance, upon screening positive for PTSD the applicant was referred for treatment. He participated in the Trauma Recovery Program. Applicant was discharged in June 2015 due to not attending appointments, however, the record indicates he was experiencing medical issues that led to hospitalization. The applicant re-initiated services in May 2019, due to depressive symptoms but did not follow-up with recommended treatment. On 28 July 2020, he participated in an alcohol use screening but declined recommended services. On 24 November 2020, the applicant participated in a consult via MH SATP and was diagnosed with Alcohol Abuse with Intoxication, Unspecified. During that assessment the applicant reported daily alcohol consumption to avoid depression and anxiety. The applicant reported receiving DUI's (Driving Under the Influence) charges and starting mandated DUI classes in January 2021.

d. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and

subsequent behavioral health condition (PTSD) during military service that mitigates his discharge. 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 contends PTSD mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant's record indicates he served in a combat zone.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant has been treated by the VA for PTSD related symptoms. Given the nexus between PTSD and avoidance, the applicant's incidents of AWOL, which resulted in his discharge, are mitigated by his BH condition of combat related PTSD.

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 partial 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. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 while 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:

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 a DD Form 214 for the period ending 25 January 1983 as follows:
Character of Service: Under Honorable Conditions (General)

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 upgrading the characterization of his discharge to honorable.

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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. 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.

3. AR 15-185 (ABCMR), the regulation governing this Board, states 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.

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.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.

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 post-traumatic stress disorder; 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, 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//