

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230011942

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) characterization of service to honorable, and a new request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), to show a different narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 AR20120003344 on 16 August 2012.
2. As a new argument, the applicant states, he was sexually assaulted by a senior member of his squadron. His command refused to bring charges against the commander who assaulted him. When he asked his command to do something, he was told he was causing a problem. He did not know how to stand up for himself and was separated for the good of the service. It impacted his family and everyday life. He finally received help after receiving an ultimatum from his wife. Part of his therapy is to ask for a discharge upgrade. The applicant notes post-traumatic stress disorder (PTSD) and sexual assault/harassment as conditions related to his request.
3. The applicant enlisted in the Regular Army on 24 October 1984. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). He reenlisted on 16 November 1987, for 4 years. The highest rank he attained was specialist/E-4.
4. Five DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:
 - Present for Duty to Absent Without Leave (AWOL), on 12 December 1989
 - AWOL to Civil Confinement on 21 December 1989
 - AWOL (Confined) to AWOL on 1 January 1990

- AWOL to Dropped from Rolls (DFR) on 1 February 1990
 - DFR to Attached, surrendered to military authorities, on 29 March 1990
5. Court-martial charges were preferred against the applicant on 30 March 1990, for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being AWOL, from on or about 12 December 1989 until on or about 29 March 1990.
 6. A statement of options, dated 30 March 1990, shows the applicant elected not to have a pre-separation medical examination.
 7. The applicant consulted with legal counsel on 30 March 1990.
 - a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.
 - b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. 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 acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veterans Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.
 - c. He was advised he could submit any statements he desired in his behalf. He elected not to provide a statement.
 8. On 3 May 1990, the applicant's immediate commander recommended approval of the request for discharge and further recommended a UOTHC discharge. The commander stated the applicant went AWOL for personal reasons. He was disillusioned with the military, and his retention was not in the best interest of the Army.
 9. The request for discharge for the good of the service was deemed legally sufficient on 8 May 1990.
 10. The separation authority approved the request for discharge on 9 May 1990, and further directed the issuance of an UOTHC discharge.

11. The applicant was discharged on 5 June 1990, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. His DD Form 214 confirms his service was characterized as UOTHC, with separation code KFS and reentry code RE-3, 3B, 3C. He was credited with 5 years, 3 months, and 25 days of net active service, with lost time from 12 December 1989 to 28 March 1990. He was awarded or authorized:

- Army Service Ribbon
- Army Achievement Medal (2nd award)
- Overseas Service Ribbon
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Grenade bar

12. The Army Discharge Review Board considered the applicant's request for an upgrade of his service characterization on or about 5 March 1998. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

13. The ABCMR reviewed the applicant's request for a discharge upgrade on 16 August 2012. After careful consideration, the Board determined the applicant's administrative separation was accomplished in compliance with applicable regulations, with no indication of procedural error. Based upon his record of misconduct, his service did not meet the standards of acceptable conduct warranting a general or an honorable discharge. His request for an upgrade in his characterization of service was denied.

14. The Army Review Boards Agency (ARBA) sent an email to the applicant on 8 December 2003, requesting copies of medical documents to support his contentions of PTSD and sexual assault. To date, no additional documentation has been received.

15. On 14 December 2023, 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 Sexual Assault records pertaining to the applicant

16. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

17. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge (UOTHC). He contends he experienced military sexual trauma (MST) and resultant PTSD that 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: 1) The applicant enlisted in Regular Army on 24 October 1984; 2) On 30 March 1990, court-martial charges were preferred on the applicant for being AWOL from 12 December 1989-29 March 1990; 3) The applicant was discharged on 5 June 1990, Chapter 10- for the good of the service in lieu of trial by court-martial. His characterization of service was UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint Legacy Viewer (JLV) was also examined.

d. On his application, the applicant noted MST and resultant PTSD were related to his request as contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

e. A review of JLV provided evidence the applicant has been engaged with treatment for PTSD related to MST. In 2018, he was awarded service-connected disability for PTSD related to his experience of MST and his resulted symptoms of PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had 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 discharge? Yes, the applicant contends he experienced MST and resultant PTSD while on active service. The applicant was diagnosed with service-connected PTSD related to MST by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced MST and resultant PTSD while on active service. The applicant was diagnosed with service-connected PTSD related to MST by the VA.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant experienced MST and resultant PTSD while on active service. He has been diagnosed with PTSD due to his experience of MST, and he is actively in treatment in the VA system of care. The

applicant did go AWOL, which is avoidant behavior. Avoidant behavior is a natural sequelae to PTSD. Therefore, there is sufficient evidence the applicant's misconduct is mitigatable in accordance with Liberal Consideration, and it recommended the narrative reason for his separation be amended to Secretarial Authority.

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 her characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board considered the advising official opine finding sufficient evidence to support the applicant had condition or experience that mitigates his misconduct. The Board notwithstanding the opine of there being sufficient evidence beyond self-report the applicant experienced MST and resultant PTSD while on active service.

2. However, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple instances of AWOL and being dropped from the rolls. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found based on the lack of evidence, the applicant's misconduct was not mitigatable by his mental health conditions or an experience while on active service. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. However, 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 the applicant's records.

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 5 June 1990 by adding the following statement in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19841024 UNTIL 19871115

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 upgrade of the applicant's under other than honorable conditions (UOTHC) characterization of service to honorable, and correction to show a different narrative reason for separation.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 635-5 (Personnel Separations), 15 August 1979, in effect at the time, did not provide for an additional entry for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989, does provide for such an entry.
3. AR 635-5-1 (Separation Program Designator 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. The regulation states that Soldiers separated under the provisions of AR 635-200, Chapter 10, are assigned separation code "KFS" with narrative reason "for the good of the service - in lieu of court-martial."
4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

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 (DRBs) 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. 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.

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//