

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20230011963

APPLICANT REQUESTS: in effect, upgrade of his under other than honorable conditions (UOTHC) discharge

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- Request Pertaining to Military Records
- Medical Documents
- Self-Authored Letters

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 indicates on his application he suffers from post-traumatic stress disorder (PTSD), and he was deployed in support of Desert Storm. There was a misjudgment of his character. He is a patriot of the U.S. Army and the United States of America. He is asking for the correction for his mental well-being.
3. The applicant provides the following documents:
 - a. Medical records.
 - b. Self-authored letters, which state, in effect:
 - (1) It depresses and saddens him to think and write the letter. Writing the letter "to whom it may concern" does not help with his PTSD and living with stage seven cancer. He just wants to get some pressure off his mind before he passes away.

(2) He was singled out by his platoon sergeant and others within his unit by them intentionally inflicting emotional harm and conspiracy to distress and defame his character. He knew he was eager to be all he could be in the military, but the lack of concern for his welfare and the wellbeing of his life was changed for eternity.

(3) Before he became a resident at his unit, he was trained by the best drill sergeants in the Army. They all knew the applicant was a patriot to the military, but the lack of concern for his welfare and emotions changed his life. All of his life he was been raised to respect everyone in God's name, but after he witnessed an African American being hung by his neck in a tree by one of our own Soldiers, he was in shock.

(4) After they all signed off duty, he decided to stop by and say hello before his ride picked him up. He walked into his coworker's room and Lord behold, he sees the Soldier watching a videotape on TV cheering on the hanging. The Soldier had the nerve to say "boy get me a beer out of the refrigerator." That's when he got angry and he threw something at the Soldier. His other fellow Soldiers stopped him and put him out of the room.

(5) The applicant waited until Monday to go to his chain of command to report what he witnessed, which was a big mistake. His life at his unit changed for the worst after he reported the incident. Even the chaplain ignored him. The chaplain, the applicant, and other Soldiers went on a canoe ride. He thought it was his opportunity to do something right, but he was wrong. The canoe he was assigned to was to ride with the chaplain. They changed and assigned him to another canoe, but he was not deterred and got into the canoe with the chaplain.

(6) A few weeks later, he went on a convoy as a passenger. The driver he was with told him he had been at the first sergeant's (1SG) home, where he witnessed the 1SG and others throwing darts at a picture of the applicant.

(7) As a dedicated Soldier and selected NWACP [sic] in his last unit, he felt obligated to do right for the safety for all Soldiers no matter what race or gender they were. When he did so all hell broke loose. The unit also targeted him to go to Iraq for the Gulf War. What they did not know is that another Soldier, who works with the 1SG, the commander, and warrant officer said that they like to put "blacks" and others on the front line. To him, it sounds like someone, maybe him, would become a casualty of war. They gave him and the other Soldier the duty to ship bombs to Iraq, which turned his life around because of his belief in God. He was trained to honor his country and fight for his country for the right reason, but not for politics like some oil and gas prices getting higher. He did not want to kill innocent people for that reason and it changed his life as well as his chain of command letting him down.

(8) Later on, during this time, he was approached by another Soldier as he was jogging. He found out later the Soldier was an undercover agent posing as a private. The Soldier had a device where he pointed a microphone at the barracks and he could hear the Soldiers talking about the applicant.

(9) Last but not least, his military attorney thought it would be a great idea for him to take an UOTHC discharge before someone tried to kill him. Now he is suffering from cancer and PTSD. His attorney told him to take an UOTHC discharge because his life was in danger. That is one of the reasons he requested to get out of the Army. He did not know what to do but to sign the request. His dream was to retire from the Army.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 28 November 1989.

b. DA Form 2-1 (Personnel Qualification Record) shows he attained the rank of private/E2 (PV2).

c. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) shows he accepted nonjudicial punishment, in the rank of PV2, for failing to go to his appointed place of duty on or about 8 December 1990. His punishment included reduction to the grade of private/E1 (PVT) and restriction and extra duty for 14 days. He appealed his punishment and his appeal was denied.

d. Memorandum involuntary foreign service tour extension, 15 July 1991, states in pertinent part, he was required to reenlist if he desired to return to the continental United States upon his original date estimated return from overseas (DEROS). They have not received documents indicating he had reenlisted or extended. As a result, his DEROS has been adjusted to a date two days prior to his expiration term of service.

e. DD Form 458 (Charge Sheet), 26 June 1991, shows his commander preferred the following charges against him:

- Failing to go to his appointed place of duty on or about 16 May 1991
- Failing to go to his appointed place of duty on or about 5 June 1991
- Failing to obey a lawful order from a noncommissioned officer (NCO) on or about 21 May 1991
- Failing to obey a lawful order from an NCO on or about 21 May 1991

f. An undated memorandum, states the applicant consulted with legal counsel and voluntarily requested to be discharged under the provisions of Army Regulation 635-200

(Personnel Separations –Enlisted Personnel), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the UCMJ; of the possible effects of an UOTHC discharge if the request was approved; of the procedures and rights available to him, and of his right to submit statements in his own behalf. The applicant declined to elected statements in his own behalf; however, they are unavailable for the Board's review.

g. On 28 August 1991, the commanding general approved his request for discharge and issued him an UOTHC discharge.

h. On 28 September 1991, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 10 months, and 1 day of active service. He was discharged for the good of service-in lieu of court-martial, and his character of service was UOTHC.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions characterization of service. He contends he experienced PTSD as a result of a deployment to Desert Storm 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 28 November 1989; 2) The applicant received nonjudicial punishment (NJP) for failing to be at his appointed place of duty on 08 December 1990; 3) On 26 June 1991, the applicant was charged with failing to be at his place of duty on 16 May and 05 June 1991 and failing to obey a lawful order from an NCO (twice) on 21 May 1991; 4) On 28 September 1991, the applicant was discharged, Chapter 10 (For the Good of the Service, In Lieu of Court Martial) with an under other than honorable conditions characterization of service. His DD214 shows he completed 1 year, 10 months, and 1 day of active service. There is insufficient evidence he deployed in support of Desert Storm.

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

c. The applicant asserts he was experiencing PTSD as a result of a deployment to Desert Storm while on active service, which mitigates his misconduct. There is insufficient evidence the applicant was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in January 2025. The applicant provided an inconsistent report of his military service to VA behavioral health providers. He reported PTSD symptoms related to “killing people daily” during his Desert Storm deployment. The applicant was initially diagnosed with PTSD after a 40-minute initial behavioral health appointment. However, he underwent a Compensation and Pension Evaluation on 05 January 2025, and he was denied treatment for service-connected PTSD-anxiety/depression. The applicant also provided civilian medical documentation, dated 29 November 2023, where the applicant was diagnosed and treated for anxiety. There was insufficient evidence provided if this diagnosis was related to the applicant’s military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient 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 misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct. The applicant provided evidence that he was diagnosed with anxiety in 2023 unrelated to his military service.

(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 or 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. The applicant did engage in repeated misconduct, which could be erratic behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board’s consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense Guidance for liberal consideration of discharge upgrade requests, the Board found relief was warranted.

2. The Board carefully considered the applicant’s request, his record of service, the frequency and nature of his misconduct, the charges preferred against him, his request for separation and his UOTHC discharge. The Board considered his statement regarding PTSD, a post-service medical diagnoses, the results of a VA evaluation and the review and conclusions of the Agency Medical Advisor. The Board found: (1) the applicant asserts he experienced PTSD which mitigates his misconduct. The applicant provided evidence that he was diagnosed with anxiety in 2023 unrelated to his military service; (2) the applicant asserts he experienced PTSD that mitigates his misconduct while on active service; (3) there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service, yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct. The Board determined, based on a preponderance of evidence, that the applicant’s punishment was harsh, mitigation existed, and that an upgrade of his discharge was warranted as a matter of liberal consideration.

BOARD VOTE:

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| ■ | ■ | ■ | GRANT FULL RELIEF |
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| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 28 September 1991 to show a General, Under Honorable Conditions characterization of service.

[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.

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. Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - 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.
 - c. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically

allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier 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 in lieu of trial by court-martial.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge In Lieu of Trial by Court-Martial.

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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 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.

6. 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 (TBI); 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.

7. 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 on the basis of 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.

8. Title 10, U.S. Code, section 1556 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//