

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230011996

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 September 1992
- DD Form 214, 22 October 2003
- DA Form 4651-R (Request for Reserve Component Assignment or Attachment), 24 February 2005
- Memorandum Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 24 November 2005

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 other mental health issues. He states, in effect, he is requesting his discharge of UOTHC discharge to be upgraded to honorable because its the compassionate and right thing to do. He completed years of honorable service. He was injured while serving on active duty and placed on medical hold status performing duties at Fort Steward, Georgia. He was honorably discharged by the U.S. Army Reserve (USAR) and released to his home station. He had over 20 years of service at which time, he decided not to drill anymore. He initiated a request to transfer to the Individual Ready Reserves (IRR) on 24 February 2005 but for some reason it did not happen. He completed all active duty service honorably. He has service related medical issues and needs help. The UOTHC discharge given to him is unjust after successfully completing twenty good years of service. He is currently receiving retirement pay as a private (PVT)/E-1.

3. The applicant provides the following documents:

a. DD Form 214 shows the applicant was in the Regular Army from 30 April 1979 through 1 September 1992. He was honorably discharged in the rank of sergeant first class for voluntary early transition. He had completed 13 years, 4 months, and 1 day of active duty service.

b. DD Form 214 shows the applicant was ordered to active duty in the USAR in the rank of staff sergeant (SSG) on 3 February 2003 in support of Operation Enduring Freedom. He was honorably released back to his USAR unit on 22 October 2003. He had completed 4 months and 2 days of active duty service.

c. DA Form 4651-R, dated 24 February 2005, shows the applicant voluntarily requested transfer to the IRR due to his job relocation to Afghanistan. The applicant signed the form. The form is not signed by the gaining or losing unit commanders.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 4 August 2002 shows the applicant enlisted in the USAR in the rank of SSG.

b. Memorandum Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 24 November 2005 informed the applicant he had completed the required years of qualifying service and was eligible for retired pay, on application, at age 60.

c. The applicant's service record was void of a complete separation packet. A memorandum, Subject: Administrative Separation, dated 1 August 2006 shows the applicant would be separated from the USAR with an UOTHC discharge in accordance with Army Regulation (IAR) 135-178 (Enlisted Administrative Separations) and reduced to PVT/E-1 under the provisions of Army Regulation (AR) 140-158 (Training and Retirement Point Credits & Unit Level Strength Accounting Records) paragraph 7-12a.

d. Orders 06-215-00068 published by Headquarters, 81st Regional Support Command, dated 3 August 2006 reduced the applicant from SSG to PVT/E-1 effective 3 September 2006 and discharged the applicant from the USAR with an UOTHC discharge effective 3 September 2006.

e. Orders C08-097102, published by U.S. Army Human Resources Command, dated 5 August 2020 placed the applicant, in the rank of PVT/E-1, on the retired list effective 21 September 2020.

f. DA Form 5016 (Chronological Statement of Retirement Points), 3 May 2024 shows the applicant had 20 years and 2 days qualifying for retirement.

5. On 23 January 2024, the Army Review Boards Agency requested medical documentation to support the applicant's issue of PTSD or other mental health. The applicant did not respond.

6. Based on the applicant's assertion he was diagnosed with PTSD and other mental health issues, the ARBA Medical Section provided a medical review for the Board's consideration.

7. MEDICAL REVIEW:

a. The applicant requests upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related PTSD and Other Mental Health Issues.

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) DD Form 214 shows the applicant was in the Regular Army from 30 April 1979 through 1 September 1992. He was honorably discharged in the rank of sergeant first class for voluntary early transition. He had completed 13 years, 4 months, and 1 day of active-duty service; 2) DD Form 214 shows the applicant was ordered to active duty in the USAR in the rank of staff sergeant (SSG) on 3 February 2003 in support of Operation Enduring Freedom. He was honorably released back to his USAR unit on 22 October 2003; 3) DA Form 4651-R, dated 24 February 2005, shows the applicant voluntarily requested transfer to the IRR due to his job relocation to Afghanistan. The applicant signed the form. The form is not signed by the gaining or losing unit commanders; 4) The applicant's service record was void of a complete separation packet. A memorandum subject Administrative Separation dated 1 August 2006 shows the applicant would be separated from the USAR with an UOTHC discharge and reduced to PVT/E-1 under the provisions of Army Regulation (AR) 140-158 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) paragraph 7-12a; 5). Orders 06-215-00068 published by Headquarters, 81st Regional Support Command, dated 3 August 2006 reduced the applicant from SSG to PVT/E-1 effective 3 September 2006 and discharged the applicant from the USAR with an UOTHC discharge effective 3 September 2006.

c. The military electronic medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA was void of any BH treatment records for the applicant. No hardcopy military BH-related records were provided for review. A review of JLV was void of any BH treatment records for the applicant and he does not have a SC disability. No hardcopy civilian BH records were provided for review.

d. The applicant requests upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to PTSD Other Mental Health Issues. A review of

the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of medical documentation supporting the applicant's assertion that his misconduct was related to PTSD and Other Mental Health Issues, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD or Other Mental Health Issues.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD and Other Mental Health Issues, and per liberal guidance his contention is sufficient to warrant the Board's consideration.

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 his misconduct was related to PTSD and Other Mental Health Issues.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of medical documentation supporting the applicant's assertion that his misconduct was related to PTSD and Other Mental Health Issues, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD or Other Mental Health Issues.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant's separation packet is not available for review. The available evidence shows he was discharged from the USAR with an under other than honorable conditions discharge in accordance with AR 135-178. The Board found no error or injustice in his available 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 insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference

of a persuasive nature in support of a clemency determination. 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 for correction of the records of the individual concerned.

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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. AR 15-185 (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. AR 135-178, sets policies, standards, and procedures to ensure the readiness of competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard (ARNG and USAR enlisted Soldiers for a variety of reasons. When the reason for separation requires the Notification Procedure, the commander will notify the Soldier in writing that his separation has been recommended. The commander will cite specific allegations on which the proposed action is based and the specific provisions of the regulation authorizing separation. The Soldier would be advised of the least favorable characterization of service he could receive. He would be advised of the following rights:

- to consult with counsel
- to submit matters on his own behalf
- to obtain copies of document that would be sent to the separation authority
- to present his case before an administrative separation board if he had more than 6 years of service
- to waive his rights

4. 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.

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 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.

6. 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.

7. 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//