

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012074

APPLICANT REQUEST: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of his under other than honorable conditions discharge
- a change in the narrative reason for separation with corresponding separation code
- foreign service credit for Somalia
- awards and decorations for service in Somalia
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Letter and Petition (31 pages) with List of Exhibits
 - Exhibit 1 – DD Form 214
 - Exhibit 2 – Applicant's Affidavit (21 pages)
 - Exhibit 3 – Character Statement (MAC)
 - Exhibit 4 – Character Statement (CP)
 - Exhibit 5 – Service Record
 - Exhibit 6 – Operation Continuous Hope Article
 - Exhibit 7 – Battle of Mogadishu Article (army.mil)
 - Exhibit 8 – Eick-Cost Article
 - Exhibit 9 – Department of Veterans Affairs (VA) Post-Traumatic Stress Disorder (PTSD) Records
 - Exhibit 10 – Leave and Earnings Statements
 - Exhibit 11 – Academic Record
 - Exhibit 12 – 2020 Grades
 - Exhibit 13 – Character Statement (HR)
 - Exhibit 14 – Army Regulation 15-185 (Army Board for Correction of Military Records)
 - Exhibit 15 – Carson Memorandum
 - Exhibit 16 – Hagel Memorandum

- Exhibit 17 – Kurta Memorandum
- Exhibit 18 – VA PTSD Rating
- Exhibit 19 – U.S. in Somalia Article
- Exhibit 20 – United Nations Operation in Somalia (UNOSOM) Article
- Exhibit 21 – Official Military Personnel File (OMPF)

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, through counsel, states:

a. The applicant is a native Montanan and enrolled member of the Confederated Salish and Kootenai tribe who served as a soldier in the United States Army. He participated in the United Nations (UN) Operation in Somalia II and ongoing operations on the Korean Peninsula. Upon his return from theater operations, an unresolved pay oversight exacerbated his PTSD symptoms and caused him to be effectively homeless. Despite his lack of adequate housing and pay, the applicant fought to survive. In Fort Hood, he maintained his swing shifts at the Robert Gray Army Field. He sought assistance at every juncture to receive his rightful wage but was perpetually overlooked, ignored, and dismissed. Desperate, he obtained additional employment as a dishwasher, waiter, and newspaper deliverer—all the while, he quietly suffered from the residual trauma and anxiety he incurred in his service.

b. As his situation reached its apex, he was offered a position on an oil rig in Sabine Pass. He felt he had no choice; it was clear that his unit, Fort Hood, and the United States Army were not coming to his rescue and joining the oil rig crew was his last and best means of survival. As a result of taking the position on the oil rig in Sabine Pass, he was reported absent without leave (AWOL) and subsequently discharged with an other than honorable characterization of service. After leaving his home in Montana to serve in the United States Army, he returned without an honorable discharge and with untreated PTSD. The applicant now respectfully requests that the U.S. Army restore his honor by upgrading his discharge to Honorable. As a result of his experience in Somalia, he suffered debilitating PTSD as well as physical side effects from Lariam, a neurotoxic antimalarial medication long abandoned by the U.S. Military. While he received an other than honorable discharge, his otherwise meritorious conduct and the U.S. Army's oversight regarding his proper pay outweighs the discharge when placed in the proper context.

c. Upon completion of basic combat training and advanced individual training, the applicant was awarded the military occupational specialty (MOS) of 77F, Petroleum Supply Specialist. A few months after arriving at Ft. Lee, he received orders to join and support UNOSOM II under Operation Continue Hope in Somalia, Africa in May 1993. The applicant and his platoon were prepared to support the communities and provide them with much needed services and supplies based on the briefings received from their superiors regarding their role as benefactors of democracy and peace. The applicant did not foresee them as being at the center of conflict. Not long after the unit arrived in Somalia, the applicant was alarmed when the platoon was issued equipment, including weapons. They had not been briefed or otherwise warned about the heightened potential for combat. Only later, after being trained on various weapons and combat techniques, and after hearing prolonged gunfights in the adjacent area, were they briefed on the "ground truth" of their environment.

d. In addition to the unexpected environment the applicant found upon arrival, he was required to take Lariam, an antimalarial drug, on a weekly basis prior to his deployment, which, unbeknownst to him, was known to pose potential dangers to human neurological health. Lariam, which contains a substance called mefloquine, was abandoned by the U.S. military as a malaria prophylactic in 2009, after a 2006 National Institute of Health study showed that mefloquine causes neurological damage and "confounds" or complicates PTSD symptoms and diagnoses, particularly among military service members, who were issued the drug regularly before deployments in malaria-prone regions of the world. (Eick-Cost, at p. 1, Exhibit 8.). The applicant started to feel the side effects of the mefloquine shortly after ingesting the medication. He suffered from hallucinations, paranoia, dizziness, and vivid nightmares. The symptoms are all commonly reported among people exposed to mefloquine and consistent with the findings of medical professionals studying its effects. He brought his condition to his superiors and was assured he was adjusting to the environment and told not to worry. His condition quickly worsened, and he sought help at the medical tent, where the lack of supplies prevented him from receiving adequate medical support. He subsequently reported back to his unit and resumed his duties while still experiencing symptoms.

e. The applicant and his platoon initially found the situation peaceful and orderly enough, but when they noticed tracer rounds streaking past the University compound, they became aware that hostilities were coming to a boil. They were further disturbed by the constant presence of children, but soon found out some of the children were child soldiers recruited by the area warlords for reconnaissance and combat purposes. The distinction, however, between the innocents and the combatants, was not usually clear. Many of the child soldiers were frequently chewing khat, a powerful stimulant that grows as a plant in Somalia and the residue from khat stained their mouths orangish-brown, and the effects of the active chemical caused their eyes to bulge, and their pupils to dilate to the edge of the iris. The applicant began to worry he would be forced to make a life-or-death decision, in which either he, or one of the children, would be killed. The

acceptance of combat violence did not prepare him to contemplate taking a child's life, nor the psychological effects of contemplating that kind of horror. Further, the side effects of taking mefloquine continually exacerbated his developing PTSD symptoms. The statement includes additional examples scenarios in which the applicant questioned whether or not he would live to see another day.

f. The applicant returned from Somalia after five months and was granted leave to see his wife. He tried to enjoy his time with his family, but the psychological effects of PTSD were still affecting him, and he had lost a significant amount of weight. His outward appearance was so different his father asked, "what happened to you?" upon first seeing his son. The people that knew him best knew that something had changed in him during his deployment to Somalia. The applicant learned of his wife's pregnancy during a "deployment" to Korea. But not long after the good news, other interfamily news took a turn for the worse and he was notified his grandmother, a second mother to him, as dying of complications from diabetes. The applicant used his leave to visit his grandmother prior to her death and as a result did not have leave remaining to be present for the birth of his son.

g. The applicant did not get in trouble in Korea, until the day prior to his departure. He received an Article 15 for failure to remove a necklace that contained a small prayer stone, despite policy permitting the use of small religious items. The first sergeant (1SG) seemed to harbor some personal animus toward the applicant for noting the religious practice. He was reduced in rank and pay of an E-4 to an E-1, lost half of his pay for two months, and ordered to serve an extra 45 days in South Korea in 1995. The applicant was forced to contact his wife and inform her that he would not be coming home to see her, or their new baby boy and the events made the suppression of his PTSD symptoms far more difficult. He appealed his punishment and was granted leave on the 44th day.

h. He believed the rank issue had been remedied since he was referred to as specialist (SPC) upon arriving at this new duty station, Ft. Hood, TX. Despite the hardships he endured during his military service, in November 1997, he chose to reenlist. His plan was to be a career soldier. On November 24, he received an Honorable Discharge Certificate and immediately re-enlisted. After the reenlistment, his pay statements showed that he was being paid at an E-1 grade, though his general rank was still SPC, so he maintained E-4 responsibilities while being paid at the rate of a private (PVT), E-1. His base pay was \$1341.60 as a SPC and was reduced to \$254.34 as an E-1 in November 1997. The circumstances were further complicated when his end of month pay dropped further to \$83.56 and then to \$0.00 after withholdings from child support and outstanding loans. With bills to pay and a family to support, this extreme and sudden financial hardship exacerbated his already strained emotional and psychological state. He sought to rectify the error, administrators told him that the problem arose from a "glitch," or computer error, which "could not be fixed." The

improper pay situation brought the applicant closer to homelessness and he was forced to obtain civilian employment to support himself and his family.

i. The applicant sought assistance from his leadership beginning in November 1997 due to the pay challenges and financial hardship. When he continued to go back for guidance in solving this issue, he was repeatedly told that the same "glitch" caused the persistent mistake. He was forced to request small loans that were subsequently taken from future paychecks and as a respected Soldier, he was "robbing Peter to pay Paul," with several jobs and military service carrying E-4 responsibilities. All the while, he was falling further behind on his finances, deepening the crisis and despair. When the applicant was offered a more consistently paying position with an oil rig company in Sabine Pass, TX, he accepted the offer, in part out of a sense of self-preservation, and in part due to his lack of impulse control arising from PTSD. He was, and remains, tortured by this decision. He valued his position in the military. He admired and respected his unit and the service itself. But the combination of impulse and duty to his family compelled him to reject being reduced to an animalistic existence. Therefore, after continuously receiving incorrect pay, which compounded his PTSD symptoms of suspicion and impulsivity, he instead chose survival and self-sufficiency. He went did not report for duty because he was working on an oil rig in Texas in order to pay child support, rent, and bills, and to provide himself with life's basic necessities.

j. Most importantly, the applicant returned to the U.S. Army at his base in Fort Hood once he was financially secure. He was not a deserter but the pay discrepancy, which occurred through no fault of his own, caused him to make a financial decision for the preservation of himself and his family. The AWOL period occurred only after six years of dutiful military service, decorations, medals, and honors. What began as a promising future as a Soldier deteriorated to conditions that forced him to seek help outside the military, thereby violating the UCMJ and resulting in his discharge. When the AWOL period is put in proper context, his service to the U.S. Army meets the standard for an honorable discharge. The applicant and counsel request the Board to rectify the situation by upgrading his discharge characterization to honorable. Additionally, the language referring to "excess leave" in Section 18 of the DD Form 214 be removed, the narrative reason for separation be corrected to read "Secretarial Authority," and the separation code be changed to "FFF."

3. The applicant provides:

a. An affidavit (Exhibit 2) from the applicant wherein the applicant reiterates the events outlined by counsel in his petition.

b. Two character statements from Soldiers that served with the applicant.

(1) Sergeant First Class (SFC) MAC indicated in his statement (Exhibit 3), dated

8 January 2020, he was the applicant's former supervisor. The applicant was one of the best Soldiers he ever had. He did not believe the actions satisfactory of the officer who gave him the Article 15 back in Korea, who was now a staff officer in the battalion. He believes he felt slighted and that the officer was vindictive and quite possibly working his leverage behind the scenes in order to prevent the applicant's pay from being corrected. The situation took a toll on the applicant and his wife became distrustful of him because she could not understand why he could not support his family. The applicant never allowed his military duties to slip, but he knew firsthand, the applicant had been living in a trailer without heat attempting to keep warm by closing off room doors and lighting oil lamps. He witnessed many Article 15's carried out, yet never saw another where he felt adjudication was handled so poorly as it was in the applicant's case. In review of the entire matter in hindsight, he is convinced that the officer who gave him the Article 15 in Korea was acting out of negative pressures from the senior leadership in the chain of command.

(2) A statement from CP (Exhibit 4) noted he and the applicant were station at Ft. Hood, TX together. He met the applicant and assumed he was a career Soldier as he was always very professionally organized, and detail oriented with a proud "spit shined" appearance of his boots. They became good friends and shared mutual interest. The applicant's squad leader was his ride to work and that came in handy when they found out about his financial hardships. The applicant moved in with his squad leader and they made the most of their trailer. It was sad seeing two Soldiers living under those conditions. He recalls the applicant experiencing extreme levels of depression and sadness. His squad leader deployed to Egypt and he inquired about the possibility of the applicant staying in the barracks. He was informed the applicant had already attempted to secure housing in the barracks and had been denied on multiple occasions. He understood the applicant made a difficult decision to leave the Army, but he had a plan. He knew the applicant's financial hardships forced him to go AWOL. It was not until his second reenlistment that the applicant went AWOL and he served honorably prior to the events that led to his discharge.

c. An article from globalsecurity.org, Operation Continuous Hope (Exhibit 6) outlined details of the mishaps that took place during UNOSOM to include the badly managed transition, the attempt to secure an environment for humanitarian relief, and the flawed peace mission with the military forces.

d. Two additional articles referenced by counsel as supporting documentation which outlines the challenges with the deployment and the effect of the medication required for the deployment.

- Battle of Mogadishu Article (army.mil) (Exhibit 7)
- Eick-Cost Article (Exhibit 8)

e. The applicant's VA PTSD medical records (Exhibit 9) for treatment received related to his PTSD, to include two notes from his treating counselor, Mr. FT, summarizing the applicant's assessment.

- 16 January 2018
- 31 December 2018

f. The applicant's LES (Exhibit 10) confirmed the decreases of pay which caused significant financial hardship.

g. The applicant's academic pursuits following his discharge with the below listed attachments:

- Academic Record (Exhibit 11)
- 2020 Grades (Exhibit 12)

h. A character statement from Ms. HR (Exhibit 13), dated 7 January 2020, a former Soldier that also deployed with the applicant. She witnessed his change from their initial meeting at the unit, very upbeat, thoughtful, and caring, to the person following their return from deployment, frustrated and angry. The deployment was said to be a peace-keeping mission, yet they were hit with mortar rounds and shot at every day while on guard duty. Despite the hardships endured, the applicant remained upbeat and optimistic through the deployment, with a decline following the deployment. The applicant even gained custody of his son, donated his kidney to his son, and still appeared to be depressed, frustrated, and always angry. She is hopeful the Board will consider his request to allow him to receive the benefits and care that he is entitled to and deserves.

i. A VA Rating Decision (Exhibit 18) dated 27 February 2023, shows the applicant received a 70% service connected disability rating for PTSD effective 17 December 2022.

j. Two additional articles describing the conditions with the UNOSOM mission.

- U.S. in Somalia Article (Exhibit 19)
- UNOSOM Article (Exhibit 20)

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

a. He enlisted in the Regular Army on 14 October 1992. Two additional DD Forms 4 (Enlistment/Reenlistment Document) list two periods of reenlistment for the applicant.

- 7 May 1996

- 25 November 1997

b. His DA Form 2-1 (Personnel Qualification Record – Part II) lists in Block 21 (Time Lost) 901 days of AWOL from 28 April 1998 through 16 October 2000. It also shows he served in Korea from 28 September 1994 through 20 October 1995.

c. A DA Form 616 (Report of Return of Absentee) shows on 16 October 2000, the applicant surrendered, and apprehension efforts were terminated.

d. A DD Form 458 (Charge Sheet) shows on 18 October 2000, court-martial charges were preferred on the applicant for one specification of being AWOL from on or about 28 April 1998 through on or about 16 October 2000.

e. On 23 October 2000, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial 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 and furnished an under other than honorable conditions discharge
- 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 apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters
- he elected not to undergo a physical evaluation prior to his separation

f. On 26 June 2001, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private (E-1).

g. On 7 September 2001, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 6 years, 4 months, and 22 days of active service with 902 days of lost time.

He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.

5. On 26 June 2024, a member of the Defense Finance Accounting Service provided email verification to confirm the applicant served in Somalia from 20 May 1993 through 28 July 1993 (2 months and 9 days).

6. A review of the applicant's record confirms administrative entries and awards were omitted from his DD Form 214. The entries and awards will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

7. On 1 August 2012, 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.

8. 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.

9. 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 in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

10. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

11. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

12. 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.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge and a change in the narrative reason for separation with corresponding separation code. The applicant contends PTSD mitigates his discharge. The applicant's request for foreign service credit as well as awards and decorations for his service in Somalia will not be addressed in this opinion and is deferred to the Board.

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:

- The applicant enlisted in the Regular Army on 14 October 1992 and reenlisted on 7 May 1996 and 25 November 1997.
- His DA Form 2-1 (Personnel Qualification Record – Part II) lists in Block 21 (Time Lost) 901 days of AWOL from 28 April 1998 through 16 October 2000. It also shows he served in Korea from 28 September 1994 through 20 October 1995.
- A DA Form 616 (Report of Return of Absentee) shows on 16 October 2000, the applicant surrendered, and apprehension efforts were terminated.
- A DD Form 458 (Charge Sheet) shows on 18 October 2000, court-martial charges were preferred on the applicant for one specification of being AWOL from on or about 28 April 1998 through on or about 16 October 2000.
- On 23 October 2000, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- On 7 September 2001, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 6 years, 4 months, and 22 days of active service with 902 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.
- On 26 June 2024, a member of the Defense Finance Accounting Service provided email verification to confirm the applicant served in Somalia from 20 May 1993 through 28 July 1993 (2 months and 9 days).

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states via counsel, "he is a native Montanan and enrolled member of the Confederated Salish and Kootenai tribe who served as a soldier in the United States Army. He participated in the United Nations (UN) Operation in Somalia II and ongoing operations on the Korean Peninsula. Upon his return from theater operations, an unresolved pay oversight exacerbated his PTSD symptoms and caused him to be effectively homeless. Despite his lack of adequate housing and pay, the applicant fought to survive. In Fort Hood, he maintained his swing shifts at the Robert Gray Army Field. He sought assistance at every juncture to receive his rightful wage but was

perpetually overlooked, ignored, and dismissed. Desperate, he obtained additional employment as a dishwasher, waiter, and newspaper deliverer-all the while, he quietly suffered from the residual trauma and anxiety he incurred in his service. As his situation reached its apex, he was offered a position on an oil rig in Sabine Pass. He felt he had no choice; it was clear that his unit, Fort Hood, and the United States Army were not coming to his rescue and joining the oil rig crew was his last and best means of survival. As a result of taking the position on the oil rig in Sabine Pass, he was reported absent without leave (AWOL) and subsequently discharged with an other than honorable characterization of service. After leaving his home in Montana to serve in the United States Army, he returned without an honorable discharge and with untreated PTSD. The applicant now respectfully requests that the U.S. Army restore his honor by upgrading his discharge to Honorable. As a result of his experience in Somalia, he suffered debilitating PTSD as well as physical side effects from Lariam, a neurotoxic antimalarial medication long abandoned by the U.S. Military. While he received an other than honorable discharge, his otherwise meritorious conduct and the U.S. Army's oversight regarding his proper pay outweighs the discharge when placed in the proper context.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected for PTSD. He initially engaged in behavioral health services via the VA in February 2017, when he contacted the VA Crisis line due to suicidal ideation. The applicant is diagnosed with chronic PTSD and is treated by a team with a focus on reducing his symptoms of PTSD.

f. 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 during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to Somalia and is 70% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged for one specification of being AWOL. Given the nexus between PTSD and avoidance, as well as the applicant's financial stressors, his instance of AWOL is mitigated by his diagnosis of PTSD.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 28 April 1998 to 16 October 2000, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service; however, the Board reviewed and concurred with the medical advisor's review finding credible evidence to support the applicant was experiencing symptoms consistent with post-traumatic stress disorder. Based on the applicant's contention, the Board granted partial relief to upgrade the applicant's discharge from under other than honorable conditions to under honorable conditions (General).

2. Prior to closing the discussion, the Board noted and concurred with the analyst of record's administrative notes annotated below.

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 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 7 September 2001 to show a characterization of service of under honorable conditions (General).

2. The Board further determined that 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 upgrading his characterization of service to honorable and amending his narrative reason for separation and corresponding codes.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 for the service period ending 7 September 2001 omitted administrative entries and awards. As a result, amend the DD Form 214 to show:

- Korea Defense Service Medal
- Armed Forces Expeditionary Medal
- Block 12f (Foreign Service): 2 months and 9 days
- Block 18 (Remarks):
 - "Continuous honorable active service from 19921014 to 19971124"
 - "Service in Somalia from 19930520 to 19930728"

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 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.

3. 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. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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.

b. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but 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 any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

4. Army Regulation 635-5 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation.

a. For Block 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

b. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

5. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

6. 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.

7. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

8. 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.

9. 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//