

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012132

APPLICANT REQUESTS: reconsideration of his previous requests to:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Medical Documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20140019906 on 7 July 2015, AR20180016132 on 10 September 2020, and AR20220009299 on 2 August 2023.

2. The applicant states:

a. He had exposure at Fort McClellan which led to depression and benign tumors that have been discovered in his head ultimately flattening his pituitary gland. His records should reflect the temporary barracks he stayed in at Fort McClellan, while waiting for his unit to finish basic training, had radiation and chemical exposure. His performance declined in his physical training scores after and during his stay at Fort McClellan. He had other injuries as well.

b. The tumors ultimately reflect the characteristics of traumatic brain injury as well as other factors including his final months as a Soldier when he was on an extensive profile. So extensive he was on a revile team for the Command Sergeant Major.

c. He was recommended for a psychological evaluation, during his assignment at Fort Bragg. He was placed on suicide watch. There are also other determining factors in his records.

d. He still suffers from depression and nerve damage such as fibromyalgia. All of this is in his medical records and he is deemed disabled by the Social Security Administration due to this nerve condition and bone damage, which set in quite early in his life after serving at Fort McClellan.

e. He never entertained the idea of harming himself before the exposure at Fort McClellan. He kept the thought to himself despite being confined. He suffered from the exposure and injuries he received while serving. His records should reflect a good bit of his injuries.

f. He is still suffering and his conditions only seem to be getting worse. He has intestinal issues and still has conditions that need to be addressed. He needs the Board to approve his upgrade to salvage what life he has left from circumstances he encountered and suffered as a result of his service.

3. The applicant provides medical documents, which show he had an MRI of his brain on 6 May 2021. There was no acute intracranial abnormality. He had an MRI Pituitary with and without contrast. He had complete empty sella, nonspecific white matter hyperintensities could be seen in chronic migraine change, small vessel ischemic change, aging brain, and demyelinating process could not be totally excluded. The medical documents are available for the Board's review.

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 on 2 June 1995.

b. DA Forms 4187 (Personnel Actions) shows his duty status was changed:

- from present for duty (PDY) to absent without leave (AWOL), 26 March 1996
- from AWOL to dropped from rolls (DFR), 26 April 1996

c. DD Form 616 (Report of Return of Absentee) shows he went AWOL on 26 March 1996. He was apprehended by civilian authorities and returned to military control on 25 August 1996.

d. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 8 January 1997. He completed 1 year, 2 months, and 5 days of active duty service. He was discharged in lieu of trial by court-martial, his characterization of service was UOTHC, his separation code and reentry code were not

listed on his DD Form 214. He had lost time from 26 March 1996 through 24 August 1996. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, and Marksman Marksmanship Qualification Badge with Rifle Bar.

5. On 5 August 2005, he applied to the Army Discharge Review Board (ADRB) requesting an upgraded discharge. The ADRB determined he was properly and equitably discharged. His request for a change in the character and/or reason of his discharge was denied.

6. On 7 July 2015, in AR20140019906, the Board denied his request to upgrade his discharge stating, the evidence presented did not demonstrate the existence of a probable error or injustice.

7. On 10 September 2020, in AR20180016132, the Board denied his request to upgrade his discharge stating, after reviewing the application and all supporting documents, to include the Department of Defense (DoD) guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. Based upon the short term of honorable service completed prior to a lengthy AWOL offense which resulted in his separation, as well as the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice, which would warrant a change to his characterization of service.

8. On 3 August 2023, in AR20220009299, the Board denied his request to upgrade his discharge stating:

a. After reviewing the application, all supporting documents, and the evidence found in the military record, the Board found that relief was not warranted. The Board carefully considered his record of service, documents submitted in support of the petition, and executed a comprehensive and standard review based on law, policy and regulation, and DoD guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of his petition, available military records and medical review, the Board concurred with the advising official finding insufficient probative evidence the applicant had a mental health or other medical condition, which would have contributed to or would not mitigate his Uniform Code of Military Justice violation; or that would have failed the medical retention standards of Chapter 3, Army Regulation 40-501 (Standards of Medical Fitness), and been a cause for referral to the Disability Evaluation System, prior to his discharge.

b. The Board noted, he provided insufficient evidence of post-service achievements or characters letters of support that would attest to his honorable conduct and mitigated his discharge characterization. The Board found insufficient evidence of in-service mitigating factors for the misconduct to weight a clemency determination. The Board determined his service record exhibits numerous instances of misconduct, during his

enlistment period of 1 years, 2 months, and 5 days of net active service, with on period of lost time. Furthermore, the Board agreed he has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the UOTHC discharge to an honorable discharge. There, the Board denied relief.

9. Based on the applicant's indication on his application that his injuries are due to his stay at Fort McClellan, the ARBA medical staff provided a medical review for the Board members.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (IPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR requesting an upgrade of his 8 January 1997 discharge characterized as under other than honorable conditions.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 2 July 1995 and was discharged on 8 January 1997 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Discharge in Lieu of Trial by Court-Martial. The DD 214 show lost time under 10 USC § 972 from 26 March 1996 thru 24 August 1996 thru (152 days). The DD 214 lists no periods of service in a hazardous duty pay area.

d. Four similar requests have been denied: 14 July 2006 (AR20050012236); 7 July 2015 (AR20140019906); 10 September 2020 (AR20180016132); and 4 August 2023 (AR20220009299). Rather than repeat their findings here, the board is referred to the records of proceedings and medical advisory opinions for the 2020 and 2023 cases.

e. New medical documentation consists of a 6 May 2021 radiologist's report for a brain MRI obtained as part of his evaluation for chronic migraines:

"Impression:

No acute intracranial abnormality. Incidental empty sella noted as described above. These may represent a normal variant or indicate possibility of idiopathic intracranial hypertension. Neurologic consultation may be considered.

f. From the report for a second MRI obtained 6 May 2021:

“1. Complete empty sella as described above.

2. Nonspecific white matter hyperintensities can be seen in chronic migraine change, small vessel ischemic change and aging brain. Demyelinating process cannot be totally excluded.

g. A cardiac echocardiogram obtained in December 2023 revealed several anatomic abnormalities.

h. None of these non-contemporaneous studies affect nor are relevant to this case.

i. JLV shows he was diagnosed with major depressive disorder in 2018 and receives care from the Veterans Hospital Administration (VHA). He is eligible for care as a humanitarian emergency and has no service-connected disabilities.

j. There continues to be insufficient probative evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violation; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

k. It is the opinion of the ARBA medical advisor that a discharge upgrade remains unwarranted.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

#### BOARD DISCUSSION:

1. 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 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 an offense 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. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. The Board concurred with the medical reviewer's opinion finding that insufficient evidence the applicant had a mental health or medical condition which would have contributed to or would now mitigate his violation under the UCMJ or that he would have failed medical retention standards.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

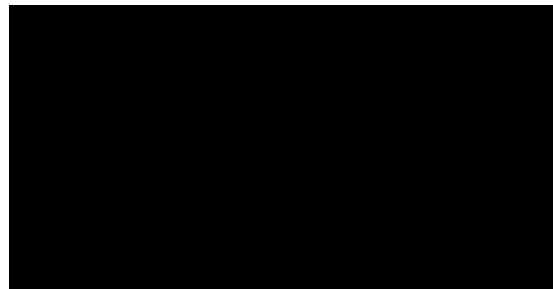
:            :            :            GRANT PARTIAL RELIEF

:            :            :            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 amendment of the ABCMR decision rendered in Docket Number AR20140019906 on 7 July 2015, Docket Number AR20180016132 on 10 September 2020, or Docket Number AR20220009299 on 3 August 2023



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. 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 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.

2. AR 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. AR 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. AR 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. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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, 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//