

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012177

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his under other than honorable (OTH) conditions characterization of service to honorable
- a video/telephonic appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States)
- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Photograph, prescription pill bottle
- National Personnel Records Center (NPRC) Correspondence
- Letter from the Review Boards Agency, 20 May 2008
- Self-Authored Statement in Support of Army Board for Correction of Military Records (ABCMR) Docket Number AR20190000705
- ABCMR Decision Notification for Docket Number AR20220006635, 27 March 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Lee County Case Action Summary
- Summary of Complaint by Dr. IM for Applicant

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220006635 on 27 January 2023.

2. The applicant states:

a. His experience with the Army, whether it was Junior Reserve Officers' Training Corps (JROTC), Reserve Officers' Training Corps (ROTC), and active-duty Army, he was always bullied and made to feel less of a person. The bullying started during his

sophomore year of college, when people began calling him Gomer Pyle and he endured getting beat with soap in a sock if his team came in last during a competition. During his senior year, he was distraught to the point that he started drinking, gambling, and living a riotous lifestyle that led to police trouble around October of 1992. He contends that due to scoring poorly at camp, his ROTC cadre informed him that his services were no longer needed by the military and that they were only seeking cadets with technical degrees such as engineering and computer science. He was told he would be commissioned and sworn in, but he would never serve in a military uniform after December. This is when he first developed post-traumatic stress disorder (PTSD).

b. Following the commissioning ceremony and oath, he never received any correspondence from the Army. He was accepted into medical school in 1994. Two years had elapsed, and he still had not received any correspondence from the military. The Army had abandoned him, which added to his PTSD.

c. In 1999, he moved to Texas to complete his internship at the University of Health Science in Fort Worth, Texas. When he arrived home one day, he noticed a vehicle occupied by four Soldiers parked across the street. He presumed it was a recruiting team of some sort because there were high school aged kids in the area. When he returned home the next day, there was a vehicle occupied by four Soldiers parked in front of his mailbox. As he approached, the Soldiers sprung out of the vehicle and asked if he was Lieutenant [the applicant]. They then told him he was remanded by the Army and had him sign a document. He was advised that movers would arrive within 48 hours to pack his personal belongings and ship his vehicle. He was further advised that when he attended graduation in New York the following week, Colonel (COL) V from Tripler Army Medical Center (TAMC) would be there to commission him and to make sure he got on his flight to Hawaii. So, in essence, the Army was kidnapping him.

d. After telling him that he would never serve in the Army because he was majoring in biology and scored poorly at Advanced Camp, the Army was now interested in him because he was a physician with a promising career. Before serving on active duty, he had already experienced abuse, neglect, separation, judgmental bias and prejudice, harassment, and all types of mental anguish from military personnel ordering him to leave his home in 48 hours. He experienced full-blown PTSD just trying to remember how to put on a military uniform.

e. Additionally, they forced him onto active duty with no military occupational specialty (MOS) training and told him that he was a physician and to "figure it out." The Army had him conducting minor surgery on Soldiers that he was not trained to perform. He was never trained at Fort Sam Houston, Texas, where the Army sends all medical Soldiers, he bypassed that, and went straight to TAMC and started performing surgery. He did not even know his MOS until he saw it on his DD Form 214 (Certificate of Release or Discharge from Active Duty).

f. The applicant annotated PTSD and other mental health as issues/conditions related to his request.

3. The applicant provides:

a. A self-authored statement that recounts his military experience from the time he entered ROTC.

b. A photograph of a prescription pill bottle [prescribed to the applicant], for "Sertraline HCL," filled by the Waco Veterans Affairs Medical Center (VAMC).

c. Correspondence from NPRC instructing the applicant to correct an application he submitted; however, the enclosures were not provided.

d. An acknowledgement of receipt from the Army Review Boards Agency (ARBA), dated 20 May 2008, informing the applicant that it can take up to 10 months to receive a response.

e. A self-authored statement in response to case AR20190000705.

f. A letter to the applicant, notifying him of denial of his reconsideration request in regard to case AR20220006635.

g. A case action summary printout from the Circuit Court of Lee County, that shows the applicant appeared in court with his defense attorney on 21 October 1992, and entered a plea of not guilty. His trial was set for 2 November 1992, at 8:30am. He was released on his present bond pending trial.

h. A dictation provided by Dr. lxxx Mxxx, pertaining to the applicant, in reference to a physical for a new job.

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

a. He enlisted in the United States Army Reserve (USAR) on 26 September 1989, as a Cadet.

b. He applied for appointment as an officer in the medical field on DA Form 61 (Application for Appointment) on 22 August 1991.

c. On 21 December 1992, he commissioned as a Reserve Component (RC) officer at the Tuskegee Institute.

d. On 11 August 1994, the applicant completed and signed DA Form 591g (ROTC Supplemental Service Agreement for Special Medical Program Participants), requesting an educational delay as a special medical program participant. The request for delay would begin in August 1994 and end in June 1999. DA Form 591 (Application for Initial (Educational) Delay from Entry on Active Duty and Supplemental Agreement), was approved on 26 September 1994, with a delay starting in August 1994 and ending in August 1995, and must have been renewed annually (and applied for at least 120 days prior to the delay ending date).

e. In a memorandum dated 13 April 1999, the applicant was appointed as a Reserve commissioned officer of the Army.

f. On 24 May 1999, the applicant signed DA Form 71 (Oath of Office – Military Personnel), acknowledging his commission as a Reserve officer.

g. On 5 June 1999, he was appointed as a transitional intern (field surgeon) in the U.S. Army Reserve in the rank/grade of captain/O-3 with concurrent orders to active duty (Orders A-04-003427).

h. The memorandum from Headquarters, Tripler AMC, dated 1 October 1999, subject: Academic Progress Counseling, states an academic counseling session was held with the applicant on 1 October 1999 because of his poor academic evaluations in two of first three rotations. The major problem areas identified by his evaluators included his below average basic medical knowledge and below average diagnostic abilities. The applicant was concerned about the implications of a probationary action and expressed a strong desire to improve his performance. He denied any personal or language problems that might be interfering with his academic performance. He would be considered for probationary action and an academic mentoring program would be sought to assist him in improving his performance.

i. On 10 January 2000, Colonel K____ T____, Director of Medical Education, Tripler AMC, recommended the applicant's release from active duty.

(1) He stated that despite counseling and intensive efforts to improve the applicant's clinical skills, he is still unable to present clinical issues clearly and unable to formulate logical treatment plans. In his opinion, the applicant lacks the knowledge and skills needed to succeed as an Army physician. Even with enormous effort, it is doubtful they can create a physician capable of functioning at the lowest level.

(2) The applicant requested voluntary resignation of his internship. He understood he incurred an active duty Army obligation while enrolled in the ROTC Program. He agreed to repay the money the Government invested in and felt he had no

possibility of success in the Army. He arranged for a civilian residency program to begin in July 2000.

j. On 24 January 2001, court-martial charges were preferred against him for being absent without leave (AWOL) under Article 86, Uniform Code of Military Justice. The DD Form 458 (Charge Sheet) listed 21 specifications of being AWOL during the period 21 March through 28 November 2000.

k. On 26 January 2001, he voluntarily tendered his resignation for the good of the service (RFGOS) wherein he stated he did not desire to appear before a court-martial or board of officers, he had been fully advised by counsel, he would present matters in mitigation, and he understood he may receive an OTHC characterization of military service if his RFGOS is accepted.

l. On 26 January 2001, he submitted a statement in support of his RFGOS wherein he stated:

(1) He received a direct commission in the Army Medical Corps on 5 June 1999 after his graduation from medical school and he never attended the Officer Basic Course. He was assigned to a transitional internship at Tripler AMC, but resigned because he felt he was not receiving the proper training or counseling to become successful. Despite his resignation, he fully intended to satisfy his military service obligation or repay any money owed from this 3-year ROTC scholarship.

(2) After his resignation, he was reassigned to work in the Clinical Services Division. For the first 2 months, from January through February 2000, he just sat in the Clinical Services Division office doing nothing. He was not given any duties or trained. Since he was in a "limbo" status and doing nothing of value, he was not expected to be in the office but was available when necessary. He became frustrated because he was not trained and the leadership never told him what was going to happen to him as a result of his resignation from the intern program. He offered to repay his obligation from ROTC, attend another internship program at another hospital, or serve his obligation on Reserve duty, but he was not provided with guidance or a decision.

(3) All of the offenses related to his failure to be at his appointed place of duty between March and November 2000. No one spoke to him about it at the time and the atmosphere was unbearable. He was later counseled for failing to be at work, but there was nothing he could do while at work. The morale was not good and it was a difficult situation.

(4) The Army is not the place for him. His frustration with the inaction of his leadership caused him to react inappropriately. Likewise, he also believed his chain of command had not taken appropriate steps to handle his situation. Notwithstanding what

occurred, he does not believe his actions warrant a general court-martial. He knew he needed to be separated from the Army to have a promising future. He was willing to repay his obligation to the Government.

m. On 8 February 2001, court-martial charges were preferred against him for an additional specification of being AWOL. Additionally, he was charged with six specifications of violating Article 90 (Failure to Obey a Lawful Order), Uniform Code of Military Justice.

n. On 3 March 2001, court-martial charges were preferred against him for 28 specifications of being AWOL. Additionally, he was charged with 24 specifications of Article 90 (Failure to Obey a Lawful Order), Uniform Code of Military Justice.

o. On 21 March 2001, the separation authority approved the applicant's RFGOS and directed the issuance of an under OTHC discharge.

p. On 6 June 2001, he was discharged in lieu of trial by court-martial with an under other than honorable characterization of service. His DD Form 214 shows he completed 1 year, 11 months, and 26 days of active service, with time lost from 14 February to 19 February 2001.

q. On 27 February 2009, the Army Discharge Review Board (ADRB) denied his request to upgrade his discharge. The Board determined he was properly and equitably discharged. The Board noted the evidence of record shows he was charged with failure to report on 21 occasions during the period 21 March through 28 November 2000. He was later charged with additional counts of being AWOL and tendered his resignation in lieu of trial by general court-martial. After careful review of the applicants' military records and the issues he submitted, the Board found no mitigating factors that would merit an upgrade of his discharge.

r. On 9 June 2020, the Army Board of Correction of Military Records (ABCMR) denied his request to upgrade his discharge. The Board found insufficient evidence of in-service mitigating factors for the misconduct. 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 and that relief was not warranted.

s. On 27 January 2023, the ABCMR denied his request for reconsideration for an upgrade of his characterization of service. The Board considered the applicant's PTSD claim and the review of the ARBA Medical Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the characterization of service the applicant received upon separation was not in error or unjust.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his under other than honorable (OTH) conditions characterization of service to honorable. He contends he experienced PTSD 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 United States Army Reserve (USAR) on 26 September 1989, as a Cadet; 2) On 24 May 1999, the applicant signed DA Form 71 acknowledging his commission as a Reserve officer; 3) On 5 June 1999, he was appointed as a transitional intern (field surgeon) in the U.S. Army Reserve with concurrent orders to active duty; 4) The memorandum from Headquarters, Tripler AMC, dated 1 October 1999 stated an academic counseling session was held with the applicant because of his poor academic evaluations in two of first three rotations and on 10 January 2000, the Director of Medical Education, recommended the applicant's release from active duty; 5) On 24 January 2001, court-martial charges were preferred against the applicant for 21 specifications of being AWOL during the period 21 March through 28 November 2000; 6) On 26 January 2001, he voluntarily tendered his resignation for the good of the service (RFGOS); 7) On 3 March 2001, court-martial charges were preferred against him for 28 specifications of being AWOL. Additionally, he was charged with 24 specifications of Article 90 (Failure to Obey a Lawful Order); 8) On 6 June 2001, he was discharged in lieu of trial by court-martial with an under other than honorable characterization of service. His DD Form 214 shows he completed 1 year, 11 months, and 26 days of active service, with time lost from 14 February to 19 February 2001; 9) On 27 February 2009, the Army Discharge Review Board (ADRB) reviewed and denied his request to upgrade his discharge; 10) On 9 June 2020 and 27 January 2023, the ABCMR reviewed denied his request to upgrade his discharge.

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 additional medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. The applicant submitted a document dated 18 May 1993. It was reported to be a preemployment physical for a physical therapy job. The medical facility and specialty of the provider was not available. The applicant was reported to meet criteria for PTSD. However, there was limited or unsupported evidence for this diagnosis. Specifically, the identified potentially traumatic event would not meet criteria for PTSD, and there was no other information provided on the applicant's symptom presentation. The applicant also provided a picture of a bottle of psychiatric medication prescribed to him from a VA

Medical Center in Waco, TX. A review of JLV provided evidence the applicant began to engage with the VA in May 2023. He has been aided with his current behavioral health conditions, poly-substance dependence, and homelessness. However, he has not been diagnosed with a service-connected behavioral health condition, including PTSD. At this time the applicant has not been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health 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. He did provide limited documentation a provider stating he was experiencing PTSD in 1993.

(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 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 go AWOL, did not follow direct orders, and failed out his residency program, which could be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition during 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 is sufficient for the board's consideration.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted the record is absent sufficient evidence beyond the applicant's self-report that he was experiencing PTSD, while he was on active service.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL. The applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. The Board found reversal of the previous Board determination is without merit, therefore relief is denied.

3. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220006635 on 27 January 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. Title 10, U.S. Code, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
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. It states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application. 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 600-8-24, in effect at the time, prescribed policy and procedure governing transfer and discharge of Army officer personnel.
 - a. Paragraph 1-16 states an officer pending court-martial charges or investigation with a review toward court-martial will not be separated without Headquarters, Department of the Army (HQDA) approval.

b. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

c. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Chapter 3 (Resignations) of the regulation prescribes the tasks, rules, and steps for processing voluntary resignations). Paragraph 3-13 (Rules for processing resignation for the good of the service in lieu of general court-martial) states an officer may submit a resignation for the good of the service in lieu of general court-martial if court-martial charges have been preferred against the officer with a view toward trial by general court-martial. An officer separated under this paragraph normally receives characterization of service of under other than honorable conditions. An officer who resigns for the good of the service (regardless of the character of service received) is barred from rights under laws administered by the Veterans Affairs based on the period of service from which the officer resigned.

e. Chapter 4 (Eliminations) of the regulation prescribes the process for elimination of an officer in the Army. Paragraph 4-1 (Overview) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

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 UOTHC 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; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

//NOTHING FOLLOWS//