

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012386

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to either general or honorable
- a video or telephone appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs Letter dated 27 August 1993

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 states in effect, he is requesting an upgrade of his under other than honorable conditions discharge to either general or honorable. The applicant is requesting correction to his record due to his 13 years of military service to the country and post-traumatic stress disorder (PTSD).
3. The applicant provides a letter from the Department of Veterans Affairs (VA) dated 27 August 1993, advising him the VA had determined he did not qualify VA benefits for his period of service from 26 October 1988 through 14 August 1992 due to the conditions under which he was discharged. He was eligible to receive VA benefits based on his service from 6 February 1979 through 25 October 1988.
4. The applicant's service record shows:
 - a. He enlisted in the Regular Army on 6 February 1979. After completing initial entry training, he was awarded military occupational specialty 72E (Telecommunications

Center Specialist). He was honorably discharged for immediate reenlistment on 13 January 1982, 25 October 1984, and 10 August 1988. The highest grade he held was staff sergeant/E-6.

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

c. The separation authority directed the applicant be discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. He was reduced to the lowest enlisted grade, private/E-1 and separated with an under other than honorable conditions discharge.

d. On 14 August 1992, he was discharged from active duty with an under other than honorable conditions character of service. His DD Form 214 shows he completed 13 years, 6 months, and 9 days of active service with no lost time. His narrative reason for separation is listed as “For the Good of the Service – In Lieu of Court-Martial.” It also shows he was authorized the:

- Army Commendation Medal (2nd award)
- Army Achievement Medal (2nd award)
- Good Conduct Medal (4th award)
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon with Number 2
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge Rifle (M-16)
- Master Parachutist Badge

5. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations

6. 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.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

8. 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.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Posttraumatic Stress Disorder (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 Regular Army on 06 February 1979 as a telecommunications center specialist, 2) he was honorably discharged for immediate reenlistment on 13 January 1982, 25 October 1984 and 10 August 1988, achieving his highest rank of E-6/Staff Sergeant, 3) the complete facts and circumstances surrounding the applicant's discharge are unavailable for the board to review, 4) he was discharged on 14 August 1992 under the provisions of Army Regulation (AR) 635-200, Chapter 10, "For the Good of the Service-in Lieu of Court-Marital," 5) he was awarded several medals, ribbons, and awards during service to include (though not exhaustive) two Army Commendation Medals, two Army Achievement Medals, four Good Conduct Medals, and two Noncommissioned Officer Professional Development Ribbons.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No Civilian BH records were provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A report of medical examination dated 01 February 1979 documented item number 42, psychiatric, as 'normal' on clinical evaluation. There are no in-service BH records available for review.

d. A review of the applicant's military service record demonstrated he was consistently given high remarks on his noncommissioned officer enlisted evaluation reports which were available for review from October 1981 through October 1991. Comments on his reports frequently indicated the applicant successfully completed job duties and demonstrated effective leadership. Moreover, a service school academic evaluation report dated 01 March 1982 documented the applicant as having "admirable qualities and aggressiveness desirable in today's soldier's. Service Member should be given every opportunity for future training and advancement."

e. Per review of JLV, the applicant is 10% service-connected (SC) through the VA for tinnitus. He is not SC through the VA for any BH-related conditions. Per JLV, the applicant was treated for alcohol withdrawal and diagnosed with alcohol dependence in 2024 with documentation indicating the applicant's use of alcohol had increased in the months leading to his hospitalization in 2024.

f. The applicant provided a letter from the Department of Veterans Affairs (VA) indicating that he is eligible to receive VA benefits based on his period of service from 06 February 1979 through 25 October 1988 as his service during this timeframe was characterized as honorable. The letter further notes that the VA requested additional information from the applicant regarding his other than honorable discharge and determined that the period of service from 26 October 1988 through 14 August 1992 does not qualify him for benefits through the VA.

g. The applicant is requesting an upgrade of his UOTHC discharge. He contends his misconduct was related to PTSD. A review of records was void of any BH diagnosis or treatment in-service. He was treated for alcohol dependence through the VA in 2024 with records indicating his alcohol use had increased over the past few months prior to his episode of treatment. There is no documentation available to indicate the applicant meets criteria for a BH condition that would support medical mitigation. Review of the applicant's military service record reflects a high-performing Soldier with no indication of previous misconduct prior to his discharge in 1992. There is no information available, from the records nor by assertion of the applicant, as to the circumstances that led to his discharge. There is a chasm between the applicant's otherwise impeccable service record and his discharge under AR 635-200, Chapter 10 indicating there was likely a change in behavior.

h. Based on the available information, it is the opinion of the Agency Behavioral Health 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, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? Unclear. The applicant asserts his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. There was no documentation available for review in-service or post-discharge indicating that the applicant was diagnosed with PTSD. There was also no information in the records available for review regarding the circumstances that led to the applicant's discharge. However, after review of the applicant's service record, the BH Agency Advisor can reasonably conclude that there was a change in the applicant's behavior given his impeccable service record through 1991 and his being discharged in lieu of court martial

in 1992. Per liberal guidance, a change in behavior is considered as possible evidence of a mental health condition and would otherwise provide a basis of support for medical mitigation. However, without any information or indication as to the circumstances that led to the applicant's discharge, a nexus between the behavior that led to discharge and the applicant's assertion of PTSD cannot be established. As such, there is insufficient information available to support an upgrade based on BH medical mitigation.

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 her 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 that the applicant had a condition or experience during his time in service that mitigated his misconduct. The opine noted the records is absent any available documentation that indicate the applicant meets criteria for a BH condition that would support medical mitigation.
2. The Board determined after review of the applicant's military service record it reflects, he was a high-performing Soldier with no indication of previous misconduct prior to his discharge in 1992. The applicant provided insufficient evidence of post service achievements or character letters of support that would attest to his honorable conduct that might have mitigated the discharge characterization. Furthermore, the Board found insufficient evidence of in-service mitigating factors for the misconduct 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 an honorable discharge. Therefore, the Board denied relief.
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 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.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 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. 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. 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 that a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM; 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

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 post-traumatic stress disorder (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, 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, 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 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.

//NOTHING FOLLOWS//