

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012487

APPLICANT REQUESTS: In effect, upgrade of his under honorable conditions (general) discharge from the U.S. Army Reserve (USAR) to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), dated 5 February 2019
- Form WH-380-E (U.S. Department of Labor Wage and Hour Division - Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act (FMLA))
- Letter from his doctor

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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, a recent change in policy states liberal consideration should be given when considering discharge upgrades for individuals who have been diagnosed with post-traumatic stress disorder (PTSD). He realizes now that he has had and lived with PTSD since 2004 after serving in Operation Enduring Freedom and Operation Iraqi Freedom. There was very little known about diagnosing and treating PTSD back then. The risks associated with exposure to the chemicals in the regions of Iraq and Kuwait were not known then either. It was realized that physical fitness test scores should have been higher in those regions. He feels this has always been such a tragedy that could have been avoided. If this information was known then, he could have received an honorable discharge.
3. On 13 June 2000, the applicant enlisted in the USAR in the rank/grade of private/E-1 for a period of 8 years.

4. The applicant's available record is void of a separation packet, a DD Form 214 (Certificate of Release or Discharge from Active Duty), or any specific details regarding the circumstances which led to his discharge from the USAR.

5. Orders 05-178-00023, issued by Headquarters, 89th Regional Readiness Command, Wichita, KS on 27 June 2005, show the applicant was discharged from the USAR in the rank/grade of specialist/E-4 under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), effective 27 June 2005. His service was characterized as under honorable conditions (general).

6. The applicant provides the following documents that are available in their entirety for the Board's consideration:

a. A Form WH-380-E shows the applicant provided his employer, Union Pacific Railroad, a medical certification issued by his health care provider to comply with FMLA requirements on 8 December 2021. His physician indicated the applicant's chronic conditions made it necessary for him to have treatment visits at least twice per year. He was being treated for Obstructive Sleep Apnea/Shift work sleep disorder.

b. A letter from his doctor, dated 9 February 2024, shows the applicant notes a history of PTSD and previously had been on medications 10 years ago. He was stable, off medications, and denied any other acute concerns at the time.

7. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge from the U.S. Army Reserve (USAR) to an honorable discharge. He contends PTSD mitigates his discharge. 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 USAR on 13 June 2000.
- Applicant's available record is void of a separation packet, a DD Form 214 (Certificate of Release or Discharge from Active Duty), or any specific details regarding the circumstances which led to his discharge from the USAR.
- Orders 05-178-00023, issued by Headquarters, 89th Regional Readiness Command, Wichita, KS on 27 June 2005, show the applicant was discharged from the USAR in the rank/grade of specialist/E-4 under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations), effective 27 June 2005. His service was characterized as under honorable conditions (general).

b. 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 a recent change in policy states liberal consideration should be given when considering discharge upgrades for individuals who have been diagnosed with post-traumatic stress disorder (PTSD). He realizes now that he has had and lived with PTSD since 2004 after serving in Operation Enduring Freedom and Operation Iraqi Freedom. There was very little known about diagnosing and treating PTSD back then. The risks associated with exposure to the chemicals in the regions of Iraq and Kuwait were not known then either. It was realized that physical fitness test scores should have been higher in those regions. He feels this has always been such a tragedy that could have been avoided. If this information was known then, he could have received an honorable discharge. Due to the period of service, no active-duty electronic medical records were available for review.

c. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic behavioral health medical records were available for review. The applicant submitted a two-sentence letter from his general medical provider, not a mental health provider, that states the applicant reported a history of PTSD and prior treatment with medication. However, that was not substantiated by any mental health provider. The letter goes on to indicate the applicant is stable, not on any medication, and has no acute concerns. The applicant did not provide any mental health treatment records or documentation that diagnose him with PTSD.

d. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation without the specific facts and circumstances that led to his discharge. However, there is insufficient evidence to support the applicant had any behavioral health condition during military service.

d. 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? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unable to opine regarding mitigation without the specific facts and circumstances that led to his separation. However, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition.

g. Per Liberal Consideration guidelines, his contention of PTSD is sufficient to warrant consideration by the Board.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The complete facts and circumstances of the applicant's discharge processing are not available for review. However, Orders 05-178-00023, issued by Headquarters, 89th Regional Readiness Command on 27 June 2005, show the applicant was discharged from the USAR in the rank/grade of SPC/E-4 under the provisions of AR 135-178 effective 27 June 2005. His service was characterized as under honorable conditions (general). The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding that without knowing the specific misconduct a recommendation for mitigation under liberal consideration policies cannot be made. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.

3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 135-178 establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States and the USAR. Paragraph 2-7 of this regulation provides that at separation, the following types of characterization of service or description of separation are authorized under this regulation:

a. Paragraph 2-9a provides that an honorable characterization of service 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.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

d. Chapter 7 of this regulation establishes policy and prescribes procedures for separating enlisted members of the USAR for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and conviction by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

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//