

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230012888

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Service Record (18 pages)
- Department of Veterans Affairs (VA), Verification Letter
- Veterans of Foreign Wars (VFW) Certificates
- Two Identification Card

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 AR20160008719 on 26 June 2018.

2. The applicant states he is requesting his under other than honorable conditions discharge be upgraded.

a. He was deployed in support of Operation Desert Shield and has been diagnosed with post-traumatic stress disorder (PTSD) as a result of his combat deployment. His discharge has been recognized as honorable for purpose of VA benefits. He had an exemplary career until his return from Desert Shield. He used a controlled substance while he was on leave during one occasion after being asked about being in Desert Shield to ease his symptoms. He is now learning about the possible effects of PTSD on his military career.

b. He is appealing a prior decision with new evidence. He has since retired and became an active member of the local chapter of VFW. He became a lifetime member and progressed from Bronze Legacy to Silver Legacy in four months. If he can obtain the Gold Legacy, he would be entitled to an engraved brick at the memorial in Kansas City, MO. He became the second trustee, but subsequently had to resign due to his discharge. He will not be able to remain a member if he is unable to upgrade his discharge. He believes that is a heavy price to endure after 31 years. He is asking for forgiveness and pardon after serving his country and now serving the Veterans in his community.

3. The applicant provides:

a. A copy of his service record (18 pages) to be referenced, as listed below:

- DA Form 2A (Personnel Qualification Record)
- DA Form 2-1 (Personnel Qualification Record)
- DD Form 458 (Charge Sheet)
- Separation Proceedings
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 215)

b. A VA verification letter dated 25 March 2024, indicates the applicant is receiving a combined service-connected disability rating of 70%. The rating includes a 70% rating for "other specified trauma and stressor related disorder: sub-threshold PTSD".

c. Two VFW Certificates to denote his service as a Bronze Legacy and Silver Legacy Life Member.
Two Identification Card

d. The applicant provides his current Texas issued driver license and the VA benefits card.

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

a. He enlisted in the Regular Army on 11 July 1978.

b. On 4 June 1984, he accepted nonjudicial punishment for wrongfully operating a privately owned vehicle without a valid driver's license in his possession. His punishment included reduction to private first class (PFC)/E-3. The punishment was further mitigated by suspending his reduction to E-3 for a period of 60 days.

c. A DD Form 458 (Charge Sheet) shows on 22 October 1991, court-martial charges were preferred on the applicant for one specification of wrongfully using cocaine between on or about 25 August 1991 and 10 September 1991.

d. On 7 November 1991, after consulting with legal counsel he requested for the good of the service 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 her 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 Certificate
- he may be ineligible for many or all benefits administered by the Army
- he may be deprived of her 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

e. On 18 November 1991, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service 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).

f. The service record includes the applicant's medical evaluation for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service on the Standard Form 88 (Report of Medical Examination) dated 4 December 1991.

g. On 14 February 1992, the applicant was discharged from active duty with a an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 13 years, 7 months, and 4 days of active service with no lost time. Block 18 (Remarks) shows he served in Southwest Asia from 29 September 1990 to 26 April 1991. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service – In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Army Commendation Medal
- Army Achievement Medal with 1 oak leaf cluster
- Good Conduct Medal – 4th award

- National Defense Medal
- NCO Professional Development Ribbon with numeral 2
- Army Service Ribbon
- Overseas Service Ribbon with numeral 2
- Driver and Mechanic Badge
- Expert Marksmanship Badge
- Southwest Asia Service Medal with 3 bronze service stars

h. A DD Form 215 was issued on 4 March 1993 to correct the applicant's authorized awards and decorations as follows:

- Army Commendation Medal
- Army Achievement Medal with 1 oak leaf cluster
- Good Conduct Medal – 4th award
- National Defense Medal
- NCO Professional Development Ribbon with numeral 2
- Army Service Ribbon
- Overseas Service Ribbon with numeral 2
- Driver and Mechanic Badge with Mechanic Bar
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Southwest Asia Service Medal with 3 bronze service stars
- Kuwait Liberation Medal

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

6. On 26 June 2018, the ABCMR rendered a decision in Docket Number AR20160008719. The Board found there was no evidence indicating he was not properly and equitably discharged in accordance with the regulations in effect at the time, that all requirements of law and regulations were not met, or that his rights were not fully protected throughout the separation process. The characterization of service he received was commensurate with the reason for his discharge.

7. 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.

8. 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 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 or in lieu of trial by court-martial.

9. 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.

10. 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. More specifically, the applicant contends he used a controlled substance on one occasion following his deployment in support of Operation Desert Shield in order to ease his symptoms. The applicant previously petitioned the Board which is summarized in Docket Number AR20160008719 on 26 June 2018. 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 11 July 1978, 2) on 04 June 1984 he received nonjudicial punishment for operating a vehicle without a valid license, 3) court-martial charges were preferred against the applicant for one specification of wrongfully using cocaine between on or about 25 August 1991 and 10 September 1991, 4) on 14 February 1992, the applicant was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 10 with the narrative reason for separation listed as For the Good of the Service-In Lieu of Court-Martial, 5) the applicant was awarded numerous awards and ribbons throughout his career, 6) His DD 214 shows that he served in Southwest Asia from 29 September 1990 to 26 April 1991, 7) the applicant previously petitioned the Board for relief to which it was determined he was properly and equitably discharged and relief was denied.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant completed a physical as part of his separation processing on 04 December 1991. The Report of Medical Examination documented item number 42, psychiatric, as 'normal' on clinical evaluation. There were no other in-service medical records available for review.

d. The applicant's available service records were reviewed. NCO Evaluation Reports from 1990 through June 1991 show the applicant's senior rater ranking fell within the 'superior' range.

e. Review of JLV shows the applicant is 70% service-connected for PTSD through the VA. He is also serviced connected for tinnitus (10%) and impaired hearing (0%). The applicant completed the initial Compensation and Pension (C&P) examination on 16 December 2016 and was diagnosed with Other Specified Trauma and Stressor-Related Disorder: sub-threshold PTSD, Alcohol Use Disorder, and Cocaine Use Disorder, in sustained full remission. It was noted that the alcohol and cocaine use disorders were as likely as not a progression of his Other Specified Trauma and Stressor-Related Disorder used as coping mechanisms. The stressors associated with his deployment were documented as collection of human remains, exposure to enemy artillery fire, and shrapnel from a SCUD missile that exploded and embedded in his vehicle. Two additional Disability Benefits Questionnaires (DBQ) were completed, dated 01 June 2018 and 06 December 2019. The diagnosis of Other Specified Trauma and Stressor-Related Disorder was reaffirmed each time. Per JLV, the applicant initiated BH treatment through the VA on 04 January 2018 due to increased anxiety related to unemployment. A consultation report dated 04 January 2018 documented that the applicant was responsible for collection of human remains while deployed which impacted him and as such his command took him off of those duties. At the time of the visit he was diagnosed with irritability/anger and anxiety, unspecified. The applicant engaged in BH treatment through the VA with primary diagnoses documented as Major Depressive Disorder, Recurrent, Mild and Alcohol Dependence, Uncomplicated until 06 April 2022 wherein he and his provider agreed to terminate treatment due to improvement in his symptoms.

f. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service. He contends he experienced PTSD that mitigates his misconduct. The applicant's in-service medical records were void of any BH diagnosis or treatment history. Overall, his service records demonstrate that he was a high-performing Soldier prior to his deployment with only one episode of misconduct early in his career (unrelated to the misconduct that led to discharge). Following his deployment, the applicant was discharged due to a positive urinalysis for cocaine. Since his discharge from the military, he has been 70% service-connected through the VA for PTSD, specifically identifying deployment-related trauma exposure as related to his condition. Moreover, the VA C&P examination specifically stated the applicant's cocaine use was associated with self-medication secondary to trauma exposure from deployment.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected for PTSD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected for PTSD through the VA. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant's in-service medical records were void of any BH diagnosis or treatment history. Following his discharge, the applicant was 70% service-connected through the VA for PTSD, with the identified stressor being related to trauma exposure during his deployment. Prior to deployment, the applicant only had one previous incident of misconduct early in his career, unrelated to substance use. The applicant's service records and NCO evaluation reports otherwise indicate a high-performing Soldier prior to deployment. Substance use is a common form of self-medication for those suffering from PTSD. As there is an association between PTSD, avoidance, and self-medicating with substances, there is a nexus between the applicant's substance use secondary to PTSD and the misconduct that led to his discharge. As such, BH mitigation is supported.

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 noted the advising official finding a nexus between the applicant's substance use secondary to PTSD and the misconduct that led to the applicant's discharge as mitigatable.

2. However, the Board notwithstanding found insufficient evidence of in-service mitigating factors to overcome the misconduct of cocaine use, which is schedule II Narcotic. The Board recognized the applicant's community involvement with the VFW, his accomplishments since his discharge some 31 years ago and his combat service time. The Board noted the applicant provided no character letters of support for the Board to weigh as a clemency determination. Although the advising opines found an association between PTSD, avoidance and self-medicating, the Board determined there is insufficient evidence to support the applicant did not know right from wrong. The Board agreed, the applicant's discharge is not in error or unjust and found reversal of he previous Board determination is without merit and 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 AR20160008719 on 26 June 2018.

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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, United States 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 Army Board for

Correction of Military Records (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 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.

7. 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//