

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230013066

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Department of Veterans Affairs (VA) Decision, 9 April 2021
- VA Form 10182 (Decision Review Request: Board Appeal (Notice of Disagreement)), 24 May 2021
- Four Character Reference Letters

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:

a. He was diagnosed with post-traumatic stress disorder (PTSD) from combat duty in Panama which happened over 25 years ago. After returning in January 1990 from combat, he knew something was wrong with him mentally and physically but could not pinpoint it. Going to the range, field problems and being around his friends of Alpha Company 2/27 Infantry, his home life started to deteriorate. He was a great Soldier until this incident in late 1991. He was not in the right frame of mind. Because he was not diagnosed at the time, nor did he seek out medical attention, he always wondered why loud noise and being alone made him happy.

b. Because of PTSD he lost his first wife. His first wife did not understand his behavior change after returning from Panama combat tour. Due to his mental deterioration, knowing himself, he never would have broken the Uniform Code of Military Justice (UCMJ). He has not been in trouble with the law before Panama. He

was outgoing, enjoying people, having a great time with his family. All these years he never knew PTSD could affect your lifestyle. The loneliness, the suicidal thoughts, he cannot stand fireworks because of the loud booming noise. He came to the Army with a clear mental state. Upon leaving the Army, which he loves dearly, his mental state is questionable and non-stable, he is not the same person. Additionally, his application to the Board notes his request is related to PTSD.

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

a. He enlisted in the Regular Army on 7 March 1989.

b. Special Court-Martial Order Number 37, dated 17 August 1992, shows the applicant was arraigned and tried on 9 April 1992.

c. He was convicted of larceny and wrongful appropriation of personal property on three occasions.

d. The sentence, which was adjudged on 9 April 1992, included reduction to private (PVT)/E-1, confinement for 2 months and a bad conduct discharge.

e. The convening authority approved the sentence on 17 August 1992. The record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

f. Special Court-Martial Order Number 65, dated 25 August 1993, affirmed the sentence. Article 71(c) having been complied with; the bad conduct discharge would be executed.

g. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharge on 21 September 1993, in the rank/grade of PVT/E-1, under the provisions Army Regulation 635-200, Chapter 3, Sec IV, by reason of Court-Martial, other, with a bad conduct characterization of service, a separation code of "JJD" and a reentry code of "4." He was awarded or authorized:

- Army Achievement Medal
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Army Service Ribbon
- Combat Infantry Badge

4. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 28 August 2000, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

5. The applicant petitioned the ABCMR for an upgrade of his service characterization. The ABCMR considered his request on 22 May 2019 and granted partial relief to upgrade his characterization to under other than honorable conditions. The applicant was issued a new DD Form 214 to reflect his characterization upgrade.

6. The applicant provides:

a. A statement from S__ A__ which states, the applicant has been an amazing support system and coach throughout her career. He was a crucial part of her developing the skills to sharpen to get better at basketball. He made sure they had transportation to and from the games. He made sure they had knowledge of the sport and conducting themselves accordingly. He communicates with their family and include them as part of the experience. She has known him since she was 8-years old, he had seen her graduate high school and move on to college. They have grown into family.

b. A statement from T__ M__ which states, she has known the applicant for over twenty years. He is a valued member of the community; he and his wife participate in neighborhood events. He lends his service and help those in need. He has an impressive resume and continues to make advancements throughout his career. He manages to spend time with his wife, children, and grandchildren, who are loved and respected. He is capable of great things and will not disappoint.

c. A statement from G__ R__ which states, she has known the applicant for more than thirty years and known him to be an honest, sometimes impetuous, but all-around good person. When people need a helping hand or something done, he is always there to lend a helping hand. He is always there to listen to your problem and finds solutions. He puts others and their needs before himself.

d. A statement from K__ H__ which states, her friend, the applicant is an exceptional individual of high character and unwavering dedication with remarkable compassion and kindness. His background as an ex-combat soldier has given him a sense of discipline, resilience, and dedication. He has faced challenges and adversity with courage, and this has, undoubtedly contributed to his outstanding character. Beyond his military service, he always continues to exhibit a strong sense of duty and honor. He upholds a set of values that are rooted in integrity and respect for others, making him a role model for everyone fortunate enough to know him. In conclusion, she has the utmost confidence in his character and abilities. He possesses the qualities of a true leader and a compassionate human being.

e. VA Decision dated 9 April 2021 which shows he is service connected for treatment purposes only under 38.U.S.C. chapter 17 for PTSD.

f. VA Form 10182 dated 24 May 2021, shows he elected to have his PTSD, hearing loss, shaving condition and total left knee arthroscopy reviewed by a Veterans Law Judge.

7. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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. Background: Following his upgrade by the Board from a bad conduct discharge to under other than honorable conditions (UOTHC), the applicant is requesting further upgrade to honorable. The applicant contends post-traumatic stress disorder (PTSD) mitigates his discharge.

b. 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 into the Regular Army on 7 March 1989.
- Special Court-Martial Order Number 37, dated 17 August 1992, shows the applicant was arraigned and tried on 9 April 1992. He was convicted of larceny and wrongful appropriation of personal property on three occasions.
- The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharge on 21 September 1993, in the rank/grade of PVT/E-1, under the provisions Army Regulation 635-200, Chapter 3, Sec IV, by reason of Court-Martial, other, with a bad conduct characterization of service, a separation code of "JJD" and a reentry code of "4."
- The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 28 August 2000, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.
- The applicant petitioned the ABCMR for an upgrade of his service characterization. The ABCMR considered his request on 22 May 2019 and granted partial relief, upgrading his characterization to under other than honorable conditions. The applicant was issued a new DD Form 214 to reflect his characterization upgrade.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "was diagnosed with PTSD from combat duty in Panama. After returning in January 1990 from combat, I knew something was wrong with me mentally and physically but could not pinpoint it. Going to the range, field problems and being around my friends of Alpha Company 2/27 Infantry, my home life started to deteriorate. If you look at my record, I was a great soldier until this incident in late 1991. I was not in the right frame of mind. Because I wasn't diagnosed at the time, nor did I seek out medical attention, I always wondered why loud noise and being alone makes me happy. Because of PTSD I lost my first wife. My first wife didn't understand my behavior change after returning from Panama Combat Tour. Due to my mental deterioration, knowing myself, I never would have broken the UCMJ!! I haven't been in trouble with the law. Before Panama, I was outgoing, enjoying people, having a great time with my family. All these years I never knew PTSD could affect your lifestyles. The loneliness, the suicidal thoughts, I cannot stand fireworks because of the loud booming noise. I came to the Army with a clear mental state. Upon leaving the Army, which I love dearly, my mental state is questionable and non-stable because of the combat in Panama, Operation Just Cause."

d. Due to the period of service, no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. However, the applicant provides a VA letter, dated 9 April 2021, indicating he was granted service connection for PTSD, for treatment purposes only.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, deployment to a combat zone, and subsequent mental health condition during military service. However, his BH condition does not mitigate his misconduct.

g. 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? Yes. The applicant deployed to a combat zone and provides documentation indicating he is service connected for treatment purposes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was court martialled due to three specifications of larceny. The applicant's BH condition does not mitigate theft/larceny. Theft is not part of the history or natural sequelae of the applicant's BH condition. In addition, the repeated pattern of his misconduct, indicates this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, conscious decisions. In addition, even if PTSD symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

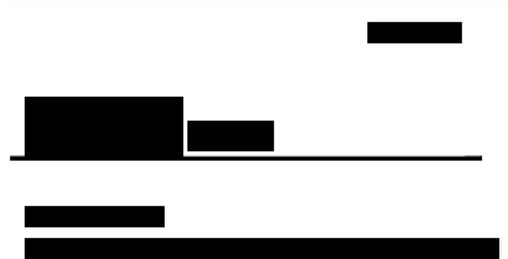
1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive 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 the medical review, the Board concurred with the advising official finding sufficient evidence the applicant had an experience, deployment to a combat zone, and subsequent mental health condition during military service. However, his BH condition does not mitigate his misconduct.
2. The opine noted, if the applicant's PTSD symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right. Under liberal consideration, the Board recognizes the applicant's post service achievements and applauds his community service and giving back to the youth. The Board found the numerous character letters of support noteworthy, attesting to the applicant's character, his commitment to his community and who he has become since his discharge. However, the Board found the applicant's misconduct could not be mitigated based on the preponderance of evidence, 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 honorable. Therefore, the Board denied relief.

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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

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.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. 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.

5. 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//