

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20230013761

APPLICANT REQUESTS: reconsideration of his previous requests for:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) item 24 (Character of Service) to under honorable conditions (general)
- appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- Department of Veteran Affairs (VA) Letter
- Memorandum for Record (MFR), Subject: Guidance to Military Discharge Review (DRBs) Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations
- MFR, Subject: Clarifying Guidance to Military DRBs and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment
- MFR, Subject: Consideration of Discharge upgrade Requests Pursuant to Supplemental Guidance to Military DRBs for Correction of Military/Naval Records by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)

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:

- AR20140012139 on 26 March 2015
- AR20180000078 on 25 August 2018

2. The applicant provides

a. A self-authored statement, undated in effect, shows he has been troubled with mental and health issues from the gulf war, PTSD and other mental health issues and when he returned, he did not receive the proper treatment. He went absent without leave (AWOL) because no one would help him with his problem, so he took his children back to Clovis, NM to his family. The VA says he was insane from 18 May 1989 to 22 May 1995.

b. Medical documents which will be reviewed and discussed by the mental health staff at the Army Review Boards Agency (ARBA).

c. VA Letter, 26 August 2022 shows a determination of insanity from 18 May 1989 to 22 May 1995. Entitlement to health care benefits for any disability determined to be service connected for active service from 18 May 1989 to 22 May 1995.

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

a. The applicant enlisted in the Regular Army on 19 May 1989.

b. During the applicant's military service, which included a deployment to Saudi Arabia from 2 September 1990 through 30 March 1991, the applicant was:

- Absent without leave (AWOL) on 25 June 1992
- dropped from the rolls (DTR) on 25 July 1992
- he was apprehended by civil authorities on 9 March 1995 and transferred to military control
- court martial charges were preferred against the applicant on 22 December 1994 and updated on 17 March 1995 for AWOL
- the applicant requested discharge in lieu of trial by court martial on 17 March 1995 under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10
- he did not desire a separation medical examination
- his commander recommended trial by special court martial on 27 April 1995
- his commander recommended approval of his request and issuance of a under other than honorable conditions discharge
- the separation authority approved his request and directed an under other than honorable conditions discharge and reduction to private/E-1
- there were no legal objections to his request

c. He was discharged under other than honorable conditions on 22 May 1995. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter

10 in lieu of trial by court martial. He had lost time from 25 June 1992 to 9 March 1995. He completed 5 years and 11 months net active service.

4. In prior ABCMR Docket Numbers AR20140012139 on 26 March 2015 and AR20180000078 on 25 August 2020, ABCMR determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of these cases were insufficient as a basis for correction of the records of the individual concerned.

5. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

6. In reaching its determination, the Board can consider the applicant's petition, and service record in accordance with the published equity, injustice, or clemency guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request to upgrade his character of service to under honorable conditions (general). On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are related to his request. 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 (RA) on 19 May 1989, 2) the applicant was deployed to Saudi Arabia from 02 September 1990 through 30 March 1991, 3) during the applicant's military service the applicant was: Absent without leave (AWOL) on 25 June 1992; dropped from the rolls (DFR) on 25 July 1992; apprehended by civil authorities on 9 March 1995 and transferred to military control; court martial charges were preferred against the applicant on 22 December 1994 and updated on 17 March 1995 for AWOL, 4) he was discharged under other than honorable conditions on 22 May 1995 under the provisions of AR 635-200, Chapter 10 in lieu of trial by court martial. He had lost time from 25 June 1992 to 9 March 1995. He completed 5 years and 11 months net active service, 5) the applicant's previous petitions to the ABCMR, summarized in Docket Numbers AR20140012139 on 26 March 2015 and AR20180000078 on 25 August 2020, were denied as the Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice.

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) and Veterans Benefits Management System (VBMS) were 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. An in-service Report of medical Examination for the purposes of enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. There were no other in-service medical records available for review.

d. A review of JLV shows the applicant is not service-connected through the VA for any conditions. A Department of Veterans Affairs Decision Review Operations Center (DROC) letter (undated) shows that the VA determined the applicant was determined to be insane during the period of service from 18 May 1989 to 22 May 1995. As part of the basis for the decision, it was noted that the medical examiner opined that "it was at least as likely as not, due to a mental disease, that the veteran exhibited traits of insanity and understand the consequences of his actions or form the intent to commit the actions leading to his discharged from service." As a result of the decision, it was determined that his service was considered Honorable for VA purposes. The applicant underwent a Compensation and Pension (C&P) examination on 11 January 2022 showing he met criteria for PTSD, Chronic, Severe, Bipolar I Disorder, Current or Most Recent Episode Depressed, With History of Psychotic Features, and Other Substance Use Disorder, in Sustained Remission. It was noted that the applicant's diagnoses of Bipolar Disorder and Polysubstance Use Disorder, In Remission are secondary to his diagnosis of PTSD. The stressor associated with his diagnosis of PTSD was documented to have occurred while deployed to Saudi Arabia in 1991. More specifically, he reported that he was in a combat zone with 26 bullets in his gun, was lost and tried to find his company and was missing in action for three days. It was noted that he was charged with being AWOL after deployment and reported experiencing severe anxiety, anger, and psychiatric symptoms since that time. A VA mental health consult note dated 23 March 2023 shows the applicant underwent a medication evaluation (provider noted as a Physician's Assistant (PA)) and was diagnosed with PTSD, Chronic, PTSD Acute (noted to be due to a recent event), and Anxiety Unspecified. Both in-service and post-military stressors were outlined, to include an event that occurred while deployed in a combat zone wherein he and his sergeants had been left after their vehicle broke down. The provider documented that the applicant's in-service trauma was his index trauma and documented the PTSD criteria that he endorsed, to which it was concluded that he met full criteria for the condition. The evaluating provider detailed the applicant's BH history, to which he reported a history of Paranoid Schizophrenia, Severe PTSD, Anxiety Disorder, Antisocial [Personality] Disorder, and Bipolar Disorder. It was documented that the applicant had been trialed various antidepressant, antipsychotic, and anxiety medications to treat his BH conditions.

e. In an undated self-authored statement, the applicant contends that he has experienced problems with PTSD and Other Mental Health Issues since the Gulf War.

He further asserted that he had requested to see BH in 1991 but was refused by his leadership. He also indicated familial issues at the time and noted that his life was threatened on one occasion. He said that despite attempting to seek assistance with the Criminal Investigation Division (CID) and Military Police (MP), no help was provided and so he had to get himself and his children to a safe place, which is why he said he went AWOL.

f. The previous ABCMR Medical Advisory in Docket Number AR20180000078 dated 25 August 2020 was reviewed and outlined the applicant's previous mental health history as of the date of that opine, which included a diagnosis of PTSD. Although the Advisor acknowledged that the applicant had a diagnosis of PTSD, it was determined that there was no nexus between his diagnosis and the actions that resulted in his discharge. More specifically, the Advisor noted that the applicant had "developed and implemented a plan to address perceived injustices with his wife and her boyfriend regarding access to his stepdaughter" and opined that he did not go AWOL to avoid triggers or distress brought on by reminders of his service in the Gulf War. Thus, the Advisor determined that there was no nexus between his diagnosis of PTSD and what were deemed "premeditated purposeful acts."

g. The applicant included BH records from the New Mexico Department of Corrections. A note dated 17 October 2008 shows in the impression section "Probable PTSD-Combat Related" in addition to Polysubstance Abuse, and Psychosis Not Otherwise Specified. The provider diagnosed the applicant with PTSD, Chronic, Psychosis NOS, Polysubstance Abuse, and Mixed Personality Disorder.

h. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a potentially mitigating BH condition through the VA and non-VA/civilian BH providers since being discharged from the military. This Advisor would contend that the applicant's misconduct of AWOL is mitigated by his diagnosis of PTSD.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, review of the applicant's records show that he has been diagnosed with PTSD via VA C&P examination, VA treating providers, and non-VA/civilian providers. The VA C&P examiner documented that combat-related stressors were associated with his diagnosis of PTSD.

(2) Did the condition exist or experience occur during military service? Yes, review of the applicant's records show that he has been diagnosed with PTSD via a VA C&P examination, his VA treating provider, and non-VA/civilian providers. The VA C&P

examiner documented that combat-related stressors were associated with his diagnosis of PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of in-service medical records were void of any BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed with PTSD through the VA, both clinically and via a C&P examination, with at least one of the stressors associated with his diagnosis noted to be combat-related, secondary to his service in Saudi Arabia (his diagnoses of Bipolar I Disorder and Polysubstance Use Disorder, In Remission were determined to be secondary to his diagnosis of PTSD). Furthermore, a VA DROC letter shows that the applicant was determined to be insane during his period of service, which, in effect, establishes that the applicant was not able to understand the consequences of his actions that led to his discharge. Although it is acknowledged that the applicant provided a statement regarding the specific reasons for his going AWOL as noted by the previous BH Advisor, his statements for going AWOL do not negate the association between the applicant's diagnosis of PTSD and the behavior that led to his misconduct. As there is an association between avoidance behaviors, poor decision-making/judgment, and trauma, there is a nexus between the applicant's diagnosis of PTSD and his misconduct of going AWOL. As such, BH mitigation is supported.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the honorable service completed prior to any misconduct in the record, the misconduct leading to the applicant's separation, and the mitigation for the misconduct found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//SIGNED//

X

CHAIRPERSON

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. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the

service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

2. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code KFS (is to be used for RA Soldiers discharged for the good of the service-conduct triable by court martial).

4. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the separation code JFS has a corresponding RE Code of "3".

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 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.

7. 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.

8. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

9. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change

ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

10. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

11. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

12. 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.

13. Section 1556 of Title 10, U.S. Code (USC), 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//