

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230013875

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable, and correction of his separation code and narrative reason for separation.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Dr. MGK__ Letter
- Medical Documents
- Character Letter

FACTS:

1. The applicant did not file within the 3-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:

a. After returning from Desert Storm the thought of losing a loved one was difficult. His mother was his biggest supporter when he got the call about her being critically ill, he really can't remember all that occurred, but he found he headed home. He had already lost a couple of fellow Soldiers to include one who killed himself in front of him while in Desert Storm.

b. In his statement he reiterated the above and asks for leniency, he was not thinking clearly when he received the phone call regarding his mother's illness. He notes the destructions done during the events in the line of duty were not always pleasant and never forgotten. The applicant lists post-traumatic stress disorder (PTSD) as a condition related to his request.

c. The applicant provides a letter from Dr. MGK___, dated 9 September 2022, that shows the applicant states he began experiences progressive neck pain, weakness and numbness in his arms and hands during his time working in Desert Storm. The onset and progression were after working on military equipment and riding in the Army tank "APC 113". Per the applicant he has also been exposed to several chemicals in the burn pit which may increase the risk of cancer. (Full letter is available for review).

3. The applicant enlisted in the Regular Army on 6 January 1989 for four years. His military occupational specialty was 12B (Combat Engineer).

4. The applicant reenlisted on 8 September 1992.

5. Orders 233-00088, dated 30 November 1993, issued by the 5th Personnel Service Company, Fort Polk, LA, shows the applicant was assigned to the 10th Replacement Battalion, Fort Drum, NY for temporary duty (Fort Benning, GA/Desert Shield) reporting date: 20 February 1993.

6. The applicant was absent without leave (AWOL) on 20 February 1993 and dropped from the rolls on 19 March 1993.

7. The applicant was apprehended by civilian authorities, returned to military control and present for duty (PDY) on 1 August 1996.

8. An updated Charge sheet shows court-martial charges were preferred against the applicant on 12 August 1996 for violations of the UCMJ. His DD Form 458 shows he was charged with AWOL from on or about 20 February 1993 until on or about 1 August 1996.

9. The applicant consulted with legal counsel on 12 August 1996 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. He elected not to submit statements in his own behalf.

10. The applicant's commander recommended approval of his request for discharge in lieu of trial by court-martial. The applicant's conduct has rendered him triable by court martial and based on his previous record, punishment can be expected to have a minimal rehabilitative effect. There does not appear to be any reasonable ground to believe the applicant is or was at the time of his misconduct, mentally defective, deranged, or abnormal. He further recommended discharge UOTHC.

11. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 16 October 1996. He directed the applicant's reduction to the lowest enlisted grade with an UOTHC discharge.

12. The applicant was discharged on 8 January 1997. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, with Separation Code KFS and Reentry Code 3. His service was characterized as UOTHC. He completed 5 years, 5 months, and 3 days of net active service. He lost time from 20 February 1993 to 7 September 1995. His awards include the National Defense Service Medal and the Army Service Ribbon.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. The applicant provides:

a. His medical documents show X-Rays of the cervical spine and a Magnetic Resonance Imaging of the cervical spine.

b. A character letter, dated 22 February 2023 that attests having known the applicant for over 45 years and that the applicant has always carried himself in a proper and quiet manner. He conducted himself with great respect and dignity and is always willing to assist anyone. He is intelligent, capable, resolute, and personable. The applicant has high standards and a young man with great reliability.

16. On 19 March 2024, an agency staff member, requested the applicant provide medical documents that support his issue of PTSD. As of 3 April 2024, no response has been provided.

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced 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 6 January 1989; 2) Court-martial charges were preferred against the applicant on 12 August 1996 for being AWOL from 20 February 1993 until 1 August 1996; 3) The applicant was discharged on 8 January 1997, Chapter 10, in lieu of trial by court-martial. His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of a deployment to Desert Storm while on active service and was also concerned for his mother, who was ill, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service. There is also insufficient evidence the applicant was deployed to Desert Storm during his active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2021, predominately for physical concerns. He has been provided psychiatric medication for his reported symptoms of PTSD, which he associated with his reported experiences in Desert Storm. The applicant does not engage in regular individual therapy, and he does not receive any service-connected disability at this time.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant has been diagnosed with PTSD by the VA related to his report of being deployed to Desert Storm. However, there is insufficient evidence the applicant deployed to this combat area during his active service. Therefore, there is insufficient evidence to support the applicant was experiencing a mental health condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with PTSD due to his report of deploying to Desert Storm.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with PTSD due to his report of being deployed to Desert Storm. However, there is insufficient evidence he deployed to this area of operations during his active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? No, there is sufficient evidence beyond self-report the applicant has been diagnosed with PTSD in 2021 due to his report symptoms that he associates with his experiences during Desert Storm. However, there is insufficient evidence the applicant deployed to this area of operations. The applicant also states he went AWOL due to his mother's illness at this time. Going AWOL is an avoidant behavior that can be associated with PTSD, but the presence of misconduct is not sufficient evidence of the presence of PTSD, and there is insufficient evidence the applicant was deployed at that time. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 20 February 1993 to 1 August 1996, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding no evidence of a the applicant deployed to the area of operations contended of Desert Shield/Desert Storm and therefore found insufficient evidence to support he was experiencing a mental health condition based on this experience. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. Additionally, the Board determined the corresponding separation code and narrative reason for separation associated with the administrative separation were appropriate

and found no error or injustice that would justify amending those blocks on his DD Form 214 and therefore denied the requested relief.

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 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. 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. AR 635-200, 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 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. A under honorable conditions (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.
 - c. Chapter 10 of that regulation provides that a Soldier 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. The discharge request may be submitted after court-martial charges are preferred against the Soldier or where required, after referral, until final action by the court-martial convening authority. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment.
4. AR 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. The general instructions stated all available

records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

b. Block 26 (Separation Code) Obtain correct entry from AR 635–5–1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

c. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code KFS is assigned to enlisted Soldiers separated under the provisions of Paragraph 10, of AR 635-200, in lieu of trial by court-martial.

6. 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 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 Post-Traumatic Stress Disorder; 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.

7. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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.

//NOTHING FOLLOWS//