

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230014122

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to a general discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 1-Witness Statement
- 1-Character Reference
- Letter, S____ B____, Psychologist, 21 June 2006
- Medical Records, June to August 2017

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 at the time of his discharge he was not mentally stable to understand what he was signing. It was an impulsive decision and he signed under duress. He sought mental health upon his return to Fort Bragg, N.C. from the Gulf War. He could not handle what he experienced in Saudia Arabia. This type of discharge has had a negative impact on his life. He has conditions and diagnoses through the PACT Act of 2022. A year after his discharge, he noticed the negative impact when he tried to get help for his mental health through the Department of Veterans Affairs. He is asking solely on the proof of a service-connected injury. Post-traumatic stress disorder (PTSD) and other mental health is also related to his request.
3. The applicant provides the following:

a. A witness statement, issued by P____ C____, which shows in part, he served on active duty with the applicant on Fort Bragg, N.C., they were both assigned to the 600th Quarter Master Company. In August 1991 the applicant went home due to his cousin being brutally murdered. While on leave he was notified that the unit was being placed on alert due to the invasion of Kuwait. In total 50 of them were deployed to the Persian Gulf in support of Operation Desert Shield. On 31 December 1990 him and the applicant were enroute to Khobar Tower to pick up parts. The applicant was driving and P____ C____ was in the passenger seat of the M35 deuce and a half troop carrier. Before they arrived, they were in a fatal accident with a Saudi National. They both saw his vehicle approaching at a high rate of speed and they braced for impact; their vehicle was overturned by the collision. This also disabled their vehicle which ended up on its passenger side. After exiting the vehicle, they noticed the driver was unresponsive and slumped over in the driver's seat. This was traumatic event for both of them. Upon returning to Fort Bragg, N.C., the applicant sought professional psychiatric help at Womack Army Hospital on Fort Bragg, NC. The applicant then went on leave and never returned.

b. A witness statement, issued by his wife N____ Y____, which shows in part, she and the applicant have been married for 18 years. The applicant got addicted to drugs shortly after his return from Saudia Arabia. He has not been able to keep a job where there is a lot of people. He went back to school and got his commercial driver's license. He drove alone in his entire truck driving career and did fine as long as he was alone. He went to several doctors, and one diagnosed him with PTSD. The applicant went AWOL because of the horrible things that took place during war. He was in a fatality and unable to bounce back from killing a man. He is trying to live a normal life and deserves honor for his sacrifice. He has been through surgeries, medicine, counseling, and psychiatry appointments.

c. A letter issued by S____ B____, psychologist, 21 June 2006, which shows he has seen the applicant in psychotherapy five time from 30 September 2005 to 11 November 2005. The applicant discontinued due to the termination of his medical benefits.

d. Medical records for the period June to August 2017, which shows the applicant's chief complaint of chronic sinusitis, sleep disordered breathing, nasal polyposis, allergic rhinitis and hearing loss.

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

a. He enlisted in the Regular Army on 6 July 1989.

b. His duty status changed from present for duty to absent without leave (AWOL) on 3 March 1990; and present for duty on 28 March 1990.

c. His DA Form 2-1 (Personnel Qualification Record) item 27 (Remarks) shows the applicant served in Southwest Asia from 7 December 1990 to 29 April 1991.

d. His duty status changed from present for duty to AWOL on 7 October 1991; and dropped from rolls (DFR) on 6 November 1991.

e. His DD Form 616 (Report of Return of Absentee), undated, shows the applicant was apprehended in Albuquerque, NM on 2 March 1995. He was charged with conspiracy, distribution and possession of cocaine and aiding and abetting distribution of drugs; and held without bail.

f. His duty status changed from confined by civilian authorities to present for duty on 4 October 1996. The applicant completed his sentence to confinement.

g. His DD Form 458 (Charge Sheet), shows Charge, Violation of the UCMJ, Article 86, specification: in that the applicant did on or about 7 October 1991, without authority absent himself from his organization, to wit: 600th Quartermaster Company, 7th Transportation Battalion, located at Fort Bragg, N.C. and did remain so absent until on or about 4 October 1996.

h. On 10 October 1996, the applicant submitted a request for discharge in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an Under Other than Honorable Conditions Discharge if his request was approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request, he acknowledged:

(1) He acknowledged he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He also understood that submitting this request for discharge he acknowledge that he is guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

(2) He had been advised and understand the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he will be deprived of many or all Army benefits that he may be ineligible for many, or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

(3) He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(4) He also understood that he may, up until the date the discharge authority approves his discharge, withdraw his acceptance of this discharge.

i. On 18 October 1996, the immediate commander/ intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an UOTHC Discharge Certificate.

j. On 30 October 1996, consistent with the chain of command recommendations, the separation authority approved the applicant's elimination from the service pursuant to AR 635-200, Chapter 10 and ordered the issuance of an UOTHC Discharge Certificate and the applicant's reduction to private/E-1.

k. On 4 May 1978, he was discharged from active duty with an UOTHC characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 23 days of active service with lost time from 7 October 1991 to 3 October 1996. He was assigned separation code KFS (For the Good of the Service) and the authority and reason for separation listed as AR 635-200, Chapter 10, with reentry code 3.

l. On 3 June 2011, the Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade to his discharge; however, after careful examination of the applicant's record of service during the period of enlistment under review and consideration of the analyst's recommendation and rationale, the Board determined that the discharge was both proper and equitable and voted to deny relief.

5. Due to the applicant's claim of mental health issues, this case is being sent to the Army Review Board's Agency for a medical review.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge of under other than honorable conditions (UOTHC). He contends he experienced mental health conditions including 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 July 1989; 2) The applicant was found AWOL from 3-28 March 1990; 3) The applicant was deployed from Southwest Asia from 7 December 1990-29 April 1991; 4) The applicant was found AWOL on 07 October 1991 till he was apprehended in New Mexico on 02 March 1995. He was charged with conspiracy, distribution, and possession of cocaine, and aiding and abetting distribution of drugs; 5) The applicant was discharged on 22 November 1996, 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) and civilian medical documentation provided by the applicant were also examined.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition including PTSD by the VA. The applicant provided civilian medical documentation from a psychologist in Albuquerque, NM, dated 21 June 2006. The applicant attended five psychotherapy sessions in 2005, and the provider diagnosed him with PTSD.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experiencing a mental health condition including PTSD, while on active service. While there is a nexus between avoidant behavior such as going AWOL and some mental health conditions including PTSD, there is no nexus between his reported mental health conditions including PTSD and his misconduct of possession and sale of illegal drugs. This type of misconduct is not a part of the natural history or sequelae of his reported mental health conditions including PTSD, and his reported mental health conditions including PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. 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 7 October 1991 to 4 October 1996, a period of 4 years, 11 months, and 27 days, 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 insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. 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. 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 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. 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.

2. 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. 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. 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, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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.

4. 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.

5. 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. 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 SPD code KFS is to be used for RA Soldiers discharged for the good of the service in lieu of court martial under the provisions of Army Regulation 635-200, chapter 10.

8. 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 SPD code KFS has a corresponding RE Code of "3."

9. 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//