

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230014542

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- restoration of his rank/grade to sergeant (SGT)/E-5
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect any awards approved for Operation Uphold Democracy in Haiti
- a personal appearance before the Board via video, telephone, or in person

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement, undated
- Department of Veterans Affairs (VA) benefits letter, 30 August 2023
- four news articles and one internet research article, 11 December 1995, 23 December 1995, 28 February 1997, 05 March 2015, and undated
- letter of support, undated
- picture of silver wrist band, undated

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 AR20120008908 on 20 November 2012.

2. As a new argument, the applicant states:

a. From his first enlistment until his discharge from the Army, he experienced post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), depression, and other mental health issues. From being stabbed off base during his first period of active duty to losing his brother/friend who was killed in action in Desert Shield/Storm in March 1991 and experiencing racism at the hands of his Sergeant First Class (SFC) and fellow Soldiers while stationed at Fort Bragg, NC, with the 82nd Airborne Division during his second period of active duty.

b. Although he suffered from mental health issues, he was never officially diagnosed while in service because, at the time, it was considered weak to ask for help if you had any physical or mental health issues. After his discharge, he continued to suffer in silence and used alcohol to cope and forget. He attempted suicide twice by running his car into a concrete pillar and slashing his arm to the vein. It was not until his roommate found him on the floor with his arm slashed that he finally received treatment from the VA in Orlando, Florida, for his mental health conditions.

c. Currently he is receiving mental health treatment from the VA for PTSD, TBI, major depression, Anxiety, and other mental health issues that are service-connected and service-related. He believes his military training taught him to use his anger for everything, but with his treatment at the VA, he is trying to control his anger. Additionally, he has an abnormal protein in his blood called Monoclonal Gammopathy of Undetermined Significance (MGUS), which he obtained when he was around radiation while stationed at his first duty station in Germany during Desert Shield/Storm. He hopes and prays the Board considers everything he has shared in his application and grants him relief. He indicates performance/ evaluations/ derogatory information are related to his request; however, he provides no further details on these issues.

3. The applicant enlisted in the Army National Guard on 5 August 1986, and was honorably released from active-duty training on 7 November 1986. He was credited with 3 months and 3 days of net active service this period.

4. He enlisted the Marine Corps Reserve on 24 June 1987.

5. The applicant enlisted in the Regular Army on 28 January 1988. He reenlisted on 27 September 1991, for 6 years. The highest rank/grade he held was SGT/E-5.

6. On 17 June 1996, court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with:

- on or about 15 August 1995, 1 November 1995, 20 January 1996, and 4 April 1996, being derelict in the performance of his duties on four occasions
- on or about 19 February 1996, violating a lawful general regulation
- on or about 22 April 1996, sleeping upon his post
- on or about 5 April 1996, unlawfully assault by grabbing around the neck a female
- on or about 23 December 1995 and 26 December 1995, dishonorably fail to maintain sufficient funds for payment of checks totaling \$90.00

7. The separation packet is not available for review. However, his record contains a dully constituted DD Form 214 that shows he was discharged on 15 November 1996, in

the grade of E-1, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. His service was characterized as UOTHC, with separation code “KFS” and reentry code “3.” He was credited with 8 Years, 9 months, and 18 days of net active service with 4 years, 3 months, and 26 days of foreign service this period. His DD Form 214 listed his immediate reenlistments as well as his continuous honorable service. He was awarded or authorized the:

- Army Commendation Medal
- Army Achievement Medal (4th Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Noncommissioned Officer’s Professional Development Ribbon with Numeral 2
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Parachutist Badge
- Driver and Mechanic Badge with Driver Bar

8. The applicant provides the following documents, which are available in their entirety for the Board’s review within the supporting documents:

a. A VA summary of benefits letter effective 14 May 2011, which shows the applicant was evaluated and rated by the VA with a 100 percent (%) total and permanent service-connected disability.

b. Four news articles pertaining to Fort Bragg’s and the 82nd Airborne Division’s problems in 1995 with racist underground, Skinhead Soldiers, Soldiers tied to extremist groups and a former Soldier being convicted of the racially motivated shooting death of a black couple.

c. A letter of support from the applicant’s friend stating he was a fine Soldier, a good roommate who rarely slept, stayed to himself, and was easily irritated. He further states he and the applicant cleaned their weapons, trucks, and other field gear with all kinds of chemicals.

d. A news article pertaining the retired Soldiers and their families and friends who gathered at the Operation Desert Storm memorial on Fort Stewart, GA, to remember the 16 Soldiers from the 24th Infantry Division who lost their lives during Operation Desert Storm.

e. An internet research article summarizing the history of Operation Uphold Democracy a United States led Multinational Force sent to Haiti on 19 September 1994 to support the return of Haitian Democracy.

9. The applicant's record does not contain, nor did he provide evidence showing he deployed to Haiti in September 1994, or that he participated as a member of the U.S. military in Operation Uphold Democracy in Haiti from 16 September 1994 to 31 March 1995 making him eligible to be awarded the Armed Forces Expeditionary Medal. Additionally, the applicant acknowledges in his self-authored statement that "He was on the bird about an hour out before the mission was aborted."

10. The applicant petitioned the Army Discharge Review Board for an upgrade of his service characterization. On 4 March 2009, he was informed that, after careful consideration, the Board determined he was properly and equitably discharged.

11. The ABCMR considered the applicant's request for an upgrade of his UOTHC discharge on 20 November 2012. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

12. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

13. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

14. Based on the applicant's contention of PTSD, TBI, and other physical and mental health conditions, the Army Review Boards Agency (ARBA) medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

#### MEDICAL REVIEW:

#### MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his discharge under other than honorable conditions (UOTHC) and restoration of his rank. He contends he experienced a traumatic brain injury (TBI) and 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) After prior service in the Army National Guard and the Marine Corps Reserve, the applicant enlisted in the Regular Army on 28 January 1988); 2) On 17 June 1996, court-martial charges were preferred against the applicant for: A) being derelict in performance in his duties on four occasions; B) violating a lawful general regulation; C) sleeping on his post; D) assaulting a female by grabbing her around the neck; and E) on two occasions writing bad checks; 3) The complete facts and circumstances surrounding the applicant's discharge are not available for review. However, his record contains a duly constituted DD Form 214 that shows he was discharged on 15 November 1996, in the grade of E-1, 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 VA documentation provided by the applicant were also examined.

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

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with a depression and insomnia since 2002, which the applicant had reported experiencing since his active service. In addition, the applicant has been diagnosed with service-connected PTSD since 2012 related to traumatic experiences he reported experiencing during his active service. He has also been found to have experienced a TBI, but this has resulted primarily in physical symptoms such as pain and migraines. However, there is insufficient evidence the applicant has ever been found to be experiencing neurocognitive deficits, which would impact his ability to make decisions or determine the difference between right and wrong.

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 had a condition or experience that partially 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 a TBI and mental health conditions including PTSD while on active service that mitigates his misconduct. The applicant has been diagnosed with service-connected PTSD, and he has been diagnosed with depression, which he reported started since his active service. Lastly,

the applicant has been reported to have experienced a TBI with the predominate symptoms being physical pain and migraines, not neurocognitive deficits.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a TBI and mental health conditions including PTSD while on active service that mitigates his misconduct. The applicant has been diagnosed with service-connected PTSD, and he has been diagnosed with depression, which he reported started since his active service. Lastly, the applicant has been reported to have experienced a TBI while on active service with the predominate symptoms being physical pain and migraines, not neurocognitive deficits.

(3) Does the condition experience actually excuse or mitigate the misconduct? Partially, there is sufficient evidence beyond self-report the applicant experiencing a mental health condition including PTSD, while on active service. There is insufficient evidence the applicant was experiencing a TBI, which would impact his behavior during active service. Therefore, there is sufficient evidence the applicant's misconduct of being derelict in performance in his duties, violating a lawful general regulation, and sleeping on his post are erratic behavior and natural sequelae to his diagnosed mental health conditions and PTSD. However, there is no nexus between his diagnosed mental health conditions including PTSD and his misconduct of assault and writing back checks: 1) these types of misconduct are not a part of the natural history or sequelae of reported mental health condition including PTSD; 2) His reported mental health conditions including PTSD do 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. The Board determined 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.

2. 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 DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The applicant's separation packet is not available for review. However, other available evidence shows the applicant was charged with commission of offenses (dereliction of duties, violating a lawful general regulation,

sleeping upon his post, assault by grabbing around the neck a female, and dishonorably failing to maintain sufficient funds for payment of checks) punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

b. Grade: Deny. The Board noted that the separation authority is authorized to order discharge or direct retention in military service. Upon determination that a soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority. The applicant received an under other than honorable conditions discharge. Therefore, his reduction to E-1 is appropriate. The Board found no error or injustice.

c. Haiti: The Board noted that the applicant's record does not contain, and he does not provide evidence showing he deployed to Haiti in September 1994, or that he participated as a member of the U.S. military in Operation Uphold Democracy in Haiti from 16 September 1994 to 31 March 1995 making him eligible to be awarded the Armed Forces Expeditionary Medal. Additionally, the applicant acknowledges in his self-authored statement that "He was on the bird about an hour out before the mission was aborted."

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 to amend the decision of the ABCMR set forth in Docket Number AR20120008908 on 20 November 2012.

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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, U.S. Code, 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.
2. Army Regulation 15-185 (ABCMR) states 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 600-8-22 (Military Awards), prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It States:
  - a. The Armed Forces Expeditionary Medal may be awarded to Servicemembers of the Armed Forces of the United States who participated or have participated as members of the U.S. military units in a U.S. military operation in which Servicemembers of any military department participate; encounter during such participation foreign armed opposition, or are otherwise placed, or have been placed, in such position that hostile action by foreign armed forces was imminent even though it did not materialize.
  - b. The Armed Forces Expeditionary Medal for U.S. military operations, U.S. Operations in direct support of the United Nations, and U.S. Operations of assistance for friendly foreign nations.
  - c. Servicemembers must have been permanently assigned, attached, or detailed to a unit that participated in or was engaged in direct support of designated operations for 30 consecutive days or for 60 nonconsecutive days in the Area of Effect (AOE) or regardless of time spent in the AOE was engaged in actual combat or duty that is equally hazardous as combat duty; was killed, wounded or injured requiring medical evacuation; or accumulates required days service (consecutive or nonconsecutive) while participating as a regularly assigned air crewmember of an aircraft flying sorties into, out of, within, or over the area in direct support of the military operation.
  - d. Paragraph C-5 of this regulation list Haiti-Operation Uphold Democracy from 16 September 1994 to 31 March 1995 as one of the specific operation approved by the Department of Defense for award of the Armed Forces Expeditionary Medal.

4. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

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.

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 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 PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

6. 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.

//NOTHING FOLLOWS//