

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230014610

APPLICANT REQUESTS:

a. Reconsideration of a previous request in ABCMR Docket Number AR20150011434, dated 26 May 2016 to amend his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in item 24 (Character of Service) from "under other than honorable conditions (UOTHC)" to "honorable".

b. As a new request, he is requesting a correction to his DD Form 214 to show in item 28 (Narrative Reason for Discharge) from "Admin Discharge Conduct Triable by Court Martial" to something better due to post-traumatic stress disorder (PTSD) and other mental health concerns.

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- An administrative decision letter from the Department of Veterans Affairs (VA)

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 AR20150011434 on 26 May 2016.

2. The applicant states he was involved in a theft ring, and although he was aware of what was happening, he never reported it to his chain of command (COC). Other than this isolated event, he served honorably and was an exceptional Soldier.

3. The applicant provides an administrative decision letter from the VA, subject "Character of Discharge Determination" that shows the following:

a. "The veteran has applied for Chapter 34 Educational Assistance Allowance. He served in the Army from June 28, 1973, to June 27, 1975, at which time he was completely separated with an Honorable Discharge. He reenlisted on June 28, 1975, and was not eligible for a complete separation on May 31, 1979, then he reenlisted again. He was discharged on September 3, 1981, with a discharge under other than honorable conditions. The scheduled completion date for his period of service beginning June 28, 1975, was June 27, 1979.

b. DISCUSSION: The veteran is considered to have been guilty of moral turpitude. 38 CFR 3.12 (d) (3).

c. CONCLUSION: The discharge for the period of service from June 23, 1979 to September 3, 1981, is under dishonorable conditions. The veteran is entitled to health care under Chapter 17 Title 38 U.S.C. for any disabilities determined to be service connected. The veteran had honest, faithful, and meritorious service from June 28, 1973, to June 27, 1979, and eligibility for VA purposes is established for that period under 38 USC 101 (18) and Public Law 95.126."

4. The applicant's service record is void of his separation documents. However, the applicant's service record reflects the following information:

a. DD Form 4 (Enlistment Contract - Armed Forces of The United States) shows he enlisted in the Regular Army on 23 June 1973 for 2 years, followed by multiple reenlistments. He was issued a DD Form 214 for the period ending 31 May 1979, that shows he was honorably discharged before his final reenlistment on 1 June 1979.

b. Memorandum, Subject: Pretrial Advice on Disposition of Court-Martial Charges, reflects the following:

(1) Summary of the charges:

- Charge I, Article 81UCMJ, 2 specifications of conspiracy to present false claim
- Charge II, Article 121 UCMJ, 2 specifications of larceny
- Charge III, Article 132 UCMJ, 2 specifications of false claim

(2) Summary of the evidence shows that he had prior knowledge he was not authorized to, but still proceeded to file two vouchers for dependent travel when in fact his dependents had not moved. He would have been authorized to file one voucher had they moved. He shared the profits with another Soldier.

(3) The recommendations of his COC, the Special Court-Martial Convening Authority, the investigating officer, and the Staff Judge Advocate (SJA) were

unanimous, in that of a General Court-Martial. The recommendations were subsequently approved by the commanding general.

c. On 17 March 1981, in a partial court-martial document shows that charges were preferred against him for specification 2, by presenting and signing an official document, to wit: a DD Form 1351-4, for presentment to a commissioned officer duly to authorized, approve, allow, and pay such claim with the intent to deceive, make, use, and present a claim against the finance office in the amount of \$341.16. Claim was false and fraudulent in its entirety as the applicant's dependents had not moved in connection with his permanent change of station. Additionally, he had previously submitted and received payment in return for said claimed dependent travel expenses.

d. DA Form 2-1 (Personnel Qualification Record) shows in:

- item 5 (Oversea Service): he served in U.S. Army Europe (EUR) Germany from 1 July 1976 to 22 June 1978 and again from 2 December 1979 to 2 September 1981
- item 9 (Awards): National Defense Service Medal (NDSM), Army Good Conduct Medal (AGCM) (2nd Award), Army Service Ribbon (ASR), Overseas Service Ribbon (OSR), Expert Badge on the M16 Rifle and 45 Caliber Pistol

e. His DD Form 214 for the period ending 3 September 1981, shows he was discharged with an UOHC discharge, pursuant to Army Regulation 635-200, Chapter 10, Administrative Discharge, Conduct Triable by Court-Martial. He received a separation code of "JFS" and the reentry codes of "3" and "3C". He completed 2 years, 3 months, and 3 days of net active service this period, with 5 years, 11 months, 4 days of total prior active service. His grade at the time of discharge was private (E1).

f. The record does not reflect, and the applicant does not provide any medical documents in support of his PTSD or any other mental health issues.

5. On 17 January 1983 in a letter from the Army Discharge Review Board (ADRB) to the applicant, it states that after having carefully reviewed his record and the issues he presented, the ADRB concluded his discharge was proper and equitable and voted to deny his request for an upgrade of his discharge.

6. In a prior case, ABCMR Docket Number AR20150011434, dated 26 May 2016, it states, after reviewing the application and all supporting documents, the Board denied the applicant's request for a re-characterization of service of his UOHC discharge to an honorable. The evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case were

insufficient as a basis for correction of the records of the individual concerned. The Board found that the reason for his discharge and the characterization were both proper and equitable.

7. Due to the applicant's claim of PTSD and other mental health issues, the case is being forwarded to the Behavioral Health staff at the Army Review Boards Agency.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) discharge, and he also now requesting his narrative reason for discharge be amended to a discharge for medical reasons. He contends he experienced mental health conditions including PTSD, which mitigates his misconduct and warrants a medical discharge. 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's service record is void of his separation documents. However, the applicant's service record reflects he enlisted in the Regular Army on 23 June 1973 for 2 years, followed by multiple reenlistments. He was issued a DD Form 214 for the period ending 31 May 1979, that shows he was honorably discharged before his final reenlistment on 1 June 1979; 2) There is evidence that in March 1981, the applicant was charged with 2 specifications of conspiracy to present false claim, 2 specifications of larceny, and 2 specifications of false claim; 3) His DD Form 214 for the period ending 3 September 1981, shows he was discharged with an UOTHC discharge, Chapter 10, Administrative Discharge, Conduct Triable by Court-Martial; 4) In 1983 the ADRB reviewed and denied the applicant request for an upgraded discharge. In 2016, the ABCMR reviewed and denied the applications request for an upgraded discharge.

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 additional VA documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct and warrants a medical discharge. There is insufficient evidence the applicant reported or was exposed to potentially traumatic event while on active service. In addition, there is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant has been engaged with the VA predominately for assistance with homelessness, polysubstance dependence, and treatment for physical concerns since 2003. In 2021, he was diagnosed by depression

and insomnia, but these conditions were not reported to be service connected, and they were attributed to his current physical conditions and living situation. There is insufficient evidence the applicant has not been diagnosed with a service-connected mental health condition including PTSD by the VA.

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. In addition, there is insufficient evidence the applicant's case warrants a referral to IDES due to the lack of evidence of the applicant being diagnosed with a mental health condition at the time of his active service.

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, which mitigates his misconduct and warrants a referral to IDES.

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

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. In addition, the applicant was charged with misconduct that has no nexus between his reported mental health conditions including PTSD in that: 1) these types of misconduct are not a part of the natural history or sequelae of his reported mental health conditions 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. In addition, there is insufficient evidence the applicant was experiencing a mental health condition at the time of his active service, and therefore, his case does not warrant a referral to IDES at this time for consideration for a medical discharge. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates 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 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 medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine also noted, there is insufficient evidence the applicant's case warrants a referral to IDES due to the lack of evidence of the applicant being diagnosed with a mental health condition at the time of his active service.

2. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board carefully considered the applicant's prior periods of honorable service and decorations and awards. The Board agreed the applicant's 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 Board determined there is insufficient evidence to support the applicant's contentions for amendment of his DD Form 214 to show an upgrade of his under other than honorable conditions (UOTHC)" to "honorable. Furthermore, the Board found 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. The Board determined reversal of the previous Board decision is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20150011434 on 26 May 2016.



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 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically

allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had 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 in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

3. Army Regulation 635-5 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge.

4. 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.

a. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

b. Table 3-6 provides that RE code "3C" applies to personnel who have completed over 4 months of service who do not meet the basic eligibility pay grade requirements of AR 601-280. They are ineligible for enlistment unless a waiver is granted

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10. RE code of "3" is the appropriate corresponding RE code for SPD code "JFS".

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

9. Title 10, U.S. Code, section 1556 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//