

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014725

APPLICANT REQUESTS: Reconsideration of his previous requests for upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- Self-Authored Statement in lieu of DD Form 149 (Application for Correction of Military Record)
- Service Medical Documents and Certificates
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical Documents
- AR20220010619 Record of Proceedings

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 Dockets Number:

- AR2001060323 on 29 January 2002
- AR20220010619 on 18 April 2023

2. The applicant states he had a bad reaction to some shots he took before going to Bosnia. Upon return there were programs set up for married Soldiers and their spouses on how to readjust back into the real world, but nothing for single Soldiers. He had been exposed to smoking cigarettes while he was in the field and drinking alcohol in the barracks especially when someone had a bad day at the motor pool. The applicant had a lady friend and when they broke up his company commander placed him on suicide watch. His head was nearly blown off during a live fire exercise and his arm was burning. He was listed as absent without leave (AWOL) when he was in jail. He has had to settle for jobs barely making minimum wage with no insurance, trying to hide the fact that he has a leg and a half to work with. Depression is a constant issue for him. He has some nerve damage in his foot.

3. The applicant enlisted in the Regular Army on 28 January 1998 in the rank/grade of private first class/E-3, for a period of 3 years. His military occupational specialty was 19K (Armor Crewman). He reenlisted on 1 February 2000 for three years.

4. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). However, the relevant DD Form 458 (Charge Sheet) is not available for review.

6. The applicant was discharged on 17 July 2000. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in lieu of trial by court martial with Separation Code KFS and Reentry Code 4. His service was characterized as UOTHC. He completed 2 years, 5 months, and 13 days of net active service. He lost time from 13 June 2000 to 19 June 2000. His awards include the Army Service Ribbon and two Marksmanship Qualification Badges.

7. 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.

8. The applicant provides:

a. A copy of his DD Form 214 and service documents as discussed above. Service certificates of participation, deployment, and combat lifesaver course.

b. A recommendation for award of the Army Achievement Medal for the period from 1 September 1998 to 11 March 1999.

c. Two temporary physical profiles, dated 16 February 2000 and 29 March 2000 show a right anterior cruciate ligament tear, and lateral meniscus. Service medical documents show he was evaluated and treated for a knee injury he sustained while playing basketball on 22 October 1998. Magnetic Resonance Imaging revealed he had an anterior cruciate ligament (ACL) tear. He reported that he did not have constant pain, but his knee pain was frequent. He had knee swelling during basic training.

d. An Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) appointment slip, dated 13 July 2000 shows the applicant had a mandatory appointment that could only be excused by his commander or first sergeant. It was strongly recommended that he abstain from the use of alcohol and/or drugs, attend Narcotics

Anonymous (NA) meetings and he received the Alcoholics Anonymous/NA list of agencies with locations and times.

e. Medical prescriptions, and ABCMR Record of Proceedings discussed below.

9. On 16 November 2001, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

10. On 31 January 2002, the ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of a probable error or injustice and denied his request.

11. On 18 April 2023, the ABCMR determined 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 applicant's records. A medical review was done in conjunction with this application.

12. 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.

13. 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 15 June 1989; 2) On 13 July 1993, court-martial charges were preferred against the applicant for going AWOL on 17 November 1992, and he was returned to military control on 10 March 1999; 3) The applicant's available record is void of the specific facts and circumstances surrounding the applicant's separation. However, the applicant's DD Form 214 show he was reduced to private/E-1 and discharged on 30 August 1999, Chapter 10, by reason of "In Lieu of Trial by Court-Martial." His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced PTSD that mitigates his misconduct while on active service. 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 was void of any medical information in regard to the applicant, and he did not provide any additional medical documentation to review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence beyond self-report the applicant was experiencing a mitigating mental health condition or experience while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence to support beyond self-report the applicant was experiencing PTSD during his active service. He did go AWOL, which can be an avoidant behavior associated with PTSD. However, the presence of misconduct is insufficient evidence of the presence of a mental health condition. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced PTSD while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 the medical review, the Board concurred with the advising official finding insufficient evidence to support beyond self-report the applicant was experiencing PTSD during his active service. The opine noted,

there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple AWOLs. The Board noted, the applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. 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. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting partial relief to correct his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 17 July 2000 to show the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 980128 UNTIL 000131

Delete: MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrade of the applicant's under other than honorable conditions (UOTHC) discharge.

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.

ADMINISTRATIVE NOTE(S): N/A

REFERENCES:

1. Section 1556 of Title 10, U.S. Code (USC), requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

3. 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 (TBI); 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.

4. 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//