

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230015124

APPLICANT REQUESTS:

- in effect, an upgrade of his general, under honorable conditions 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).

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 following his return from Southwest Asia (SWA), he suffered a mental breakdown. He was hospitalized while still in the service and did not receive follow-up treatment prior to or following his release from active duty. He is seeking mental help for his lifelong battle with post-traumatic stress disorder (PTSD). He performed admirably during his service to his country.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 29 May 1990.
  - b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he served in Saudi Arabia from 28 December 1990 through 14 March 1991.
  - c. On 16 December 1991, the applicant underwent a medical examination for the purpose of separation which indicated he was generally in good health. He was marked qualified for separation.
    - Standard Form (SF) 88 (Report of Medical Examination)
    - SF 93 (Report of Medical History)

d. On 16 December 1991, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he had the mental capacity to understand and participate in separation proceedings and he was mentally responsible.

e. On 26 November 1991, he accepted nonjudicial punishment for one specification of failure to obey a lawful order to pull his pants up above his waist. His punishment included reduction to private/E-1.

f. On 13 December 1991, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. The reasons for his proposed action were the applicant's continuous demonstration of a recalcitrant attitude toward meeting the standards required by Soldiers in the U.S. Army.

g. On 13 December 1991, after consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge

h. On 16 December 1991, the immediate commander initiated separation action against the applicant for unsatisfactory performance. He recommended that his period of service be characterized as under honorable conditions (General).

i. On 2 January 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, for unsatisfactory performance. He would be issued a General Discharge Certificate.

j. On 8 January 1991, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows completed 1 year, 7 months, and 10 days of active service. He was assigned Separation Code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Southwest Asia Service Medal with two bronze service stars
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, (AR 15-185) an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

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

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (General) discharge. He contends PTSD as related to his request.

b. 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:

- The applicant enlisted into the Regular Army on 29 May 1990.
- His DA Form 2-1 (Personnel Qualification Record – Part II) shows he served in Saudi Arabia from 28 December 1990 through 14 March 1991.
- On 26 November 1991, he accepted nonjudicial punishment for one specification of failure to obey a lawful order to pull his pants up above his waist. His punishment included reduction to private/E-1.
- On 13 December 1991, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 13, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for unsatisfactory performance. The reasons for his proposed action were the applicant's continuous demonstration of a recalcitrant attitude toward meeting the standards required by Soldiers in the U.S. Army.

- On 2 January 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 13, AR 635-200, for unsatisfactory performance. He would be issued a General Discharge Certificate.
- On 8 January 1992, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 7 months, and 10 days of active service. He was assigned Separation Code JHJ and the narrative reason for separation listed as "Unsatisfactory Performance," with reentry code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, following his return from Southwest Asia (SWA), he suffered a mental breakdown. He was hospitalized while still in the service and did not receive follow-up treatment prior to or following his release from active duty. He is seeking mental help for his lifelong battle with post-traumatic stress disorder (PTSD). He performed admirably during his service to his country

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy documentation showing any mental health issues during his time in service. The applicant provides hardcopy documentation indicating on 16 December 1991, he participated in a medical examination for the purpose of separation which indicated he was generally in good health and marked as qualified for separation. During this examination the applicant did not endorse any mental health concerns including depression, anxiety, nervousness, nor sleep issues. On the same day, he participated in a Mental Status Evaluation, no mental health issues were noted, and the report indicates the applicant was mentally responsible and had the mental capacity to understand and participate in separation proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD. The applicant was contacted by a member of the ARBA Case Management Division on 1 February 2024, requesting he provide medical documents supporting his contention of PTSD. No response was received.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any behavioral health condition during military service or after his discharge. However, the applicant should submit any medical documentation that becomes available.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition.

h. Per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

#### 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 advisory official finding the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD. The applicant provided no evidence of PTSD, post-service achievements, or letters of reference in support of a clemency determination. The Board determined the character of service the applicant received upon separation was not in error or unjust.

2. The Board noted the applicant was discharged for unsatisfactory performance, credited with 1 year, 7 months, and 10 days of active service and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

3. 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. Title 10, U.S. Code, 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. 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.

3. 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. Paragraph 3-7a (Honorable Discharge) states 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. Chapter 13 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

4. 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 post-traumatic stress disorder (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.

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 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, on 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.

6. 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.

7. 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//