

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20240000174

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Miami-Dade Community College Certificate
- Broward Community College Certificate
- Certificates of Achievement
- American Medical Response Certificates
- Certificates of Completion
- Certificates of Training
- Certificate of Compliance
- Letter from Division of State Fire Marshal
- Certificate of Appreciation
- Miami-Dade Transit Training Certificate
- Letters of Recognition
- Department of Human Resources Certificate
- Unit Citation
- My Health Vet Medications List
- Allergies and Adverse Reactions Summary

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 indicates on his application, he suffers from other mental health issues. He states, he has turned his life around. He has been a firefighter for the City of Miami since 2000 until present. His children are all doing great, and his marriage is amazing. He was able to bounce back from the issues he was having, during the Gulf War. He was under a lot of stress, while deployed and had difficulty dealing with the stress. He made mistakes, during that time, but he has surely changed for the better.

3. The applicant provides the following documents:

a. Miami-Dade Community College Certificate, 8 December 1992, shows he completed all requirements in first responder.

b. Broward Community College Certificate, 6 August 1993, shows he received the certificate in Emergency Medical Technician.

c. Certificates of Achievement, for:

- Completing D.O.T. Emergency Medical Technician Course, 6 August 1993
- Completing Advanced Emergency Medical Technology Paramedic Program, 7 August 1998

d. American Medical Response Certificates for:

- Completing Advanced Cardiac Life Support - Provider, 1 September 1998
- Emergency Response to Terrorism: Basic Concepts, 16 September 1998

e. Certificates of Completion for:

- Rope Rescue, 16-18 February 2000
- Emergency Vehicle Operation Course, 21 March 2000
- Survival Techniques and Rescue, 23-24 March 2000
- Recruit Paramedic Orientation, 28 April 2000
- FLUSAR VMR Operations Course, 15 December 2011

f. Certificates of Training for:

- Initial Response to Hazardous Materials Incidents: Concept Implementation, 28 March 2000
- Initial Response to Hazardous Materials Incidents: Basic Concepts, 31 March 2000

g. Bureau of Fire Standards and Training Certificate of Compliance, 18 April 2000.

h. Letter from Division of State Fire Marshal, 24 July 200, awarded him certification of his professional accomplishments. The entire letter is available for the Board's review.

i. The International Association of Fire Fighters Certificate for First Responder Operation, 23 December 2000.

j. Letter of Appreciation, 19 September 2001, for appropriate recognition for his exemplary performance. The entire letter is available for the Board's review.

k. Letter from the City of Miami, 14 June 2005, for five years of dedicated service provided to the community and department.

l. Certificate of Appreciation, 11 December 2008, for his tremendous contributions to the success of the City Hall Tree Lighting Celebration.

m. Miami-Dade Transit Training Certificate, 2 Mar 2011, for completing Managing Transit Emergencies II (Operations Level).

n. Letters of Recognition, 31 May 2011 and 26 April 2017 for appropriate recognition for his exemplary performance. The letters are available for the Board's review.

o. City of Miami Department of Human Resources Certificate, 7 January 2016, for completing Interview Rater Training.

p. Unit Citation, 27 March 2018, in recognition of his exemplary performance. The entire citation is available for the Board's review.

q. His My Health Vet medications list and allergies and adverse reactions summary, which are available for the Board's review.

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

a. He enlisted in the Regular Army on 24 July 1987.

b. DA Forms 4856 (General Counseling Form) shows he was counseled on:

- 14 August 1990 for failure to complete the company run, he concurred with the counseling and signed the form
- 10 May 1991 for failing to meet physical fitness standards, he signed the form
- 14 May 1991 for failing to make the physical training run and being overweight, he concurred with the counseling and signed the form

c. Record of Trial by Summary Court-Martial, 20 February 1991, shows he was found guilty, in the rank of private first class, of dereliction in the performance of duty by failing to report to his security position. His sentence included reduction to the rank of private (PV2)/E-2 and forfeiture of \$100.

d. DA Form 3822 (Report of Mental Status Evaluation), 30 May 1991, shows he was psychiatrically cleared for any administrative action deemed appropriate by command.

e. SF Form 88 (Report of Medical Examination), 30 May 1991, shows he had no medical conditions and was qualified for separation. His Report of Medical History, shows he had depression or excessive worry.

f. Memorandum for Record, 3 June 1991, stated in October 1990 he received a company grade Article 15 for leaving his post, while on guard duty at the Division Ammunition Supply Point at King Fahd International Airport in Saudi Arabia. The only copy of the Article 15 was attached to his separation packet, which was lost at brigade level.

g. In an undated memorandum, his commander notified him he was initiating separation of the applicant under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c Commission of a Serious Offense for receiving a summary court-martial for sleeping on guard duty, while in a war time situation, receiving an Article 15 for quitting his post without being properly relieved while in time of war, and repeated counseling for physical training failure. His commander was recommending he receive an under honorable conditions (General) discharge. The separation authority was not bound by the commander's recommendation as to characterization of service. On 20 June 1991, the applicant acknowledged receipt of notification of the separation action.

h. On 20 June 1991, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the separation action, the rights available to him, and the effect of waiving those rights. The applicant indicated he understood his rights, requested consideration of his case by an administrative separation board and elected to submit a statement in his own behalf, which states:

(1) He requested that the approval authority either disapprove or suspend execution of his separation so he could remain on active duty until his expiration term of service (ETS) on 23 July 1991.

(2) His military occupational specialty was 11B (Infantryman), he had been on active duty for nearly four years. He attended basic training and advanced individual training at Fort Benning, Georgia. This was his second time at Fort Campbell. His goal upon arriving was to be the best professional Soldier he could be, unfortunately soon after

he arrived, he was placed on the overweight program, which flagged him from attending any schools, promotions, and awards.

(3) He got off the overweight program shortly before his permanent change of station to Korea. When he arrived in his unit, he was given the job as the battalion mail clerk for the entire year he was there. As the battalion mail clerk, he had great responsibility for the security and distribution of the battalion mail. He received an oral commendation from his inspectors, during the division inspection. He enclosed three documents as evidence (not available for the Board's review) of his achievements.

(4) As he returned to Fort Campbell in August 1990, the division was getting ready to deploy to Saudi Arabia where he served proudly with his unit, during Operation Desert Shield and Storm.

(5) He was not proud of the incident that led to the initiation of separation, but he took full responsibility for the incident as a Soldier must. He realized what he did was a serious lapse of judgement and he had no disciplinary problems since that time.

(6) He asked he be allowed to remain on active duty for the remainder of 27 days left until his ETS. If retention was not possible he asked that he receive an honorable discharge, so he would not have the stigma of an under honorable conditions (general) discharge when seeking civilian employment.

i. The applicant asked Sergeant (SGT) K- to make a statement, which states the SGT felt the accusations and findings against the applicant were accurate. He had tried to work with the applicant. The SGT tried to help him make his physical training runs and noticed he tried. However, he no longer tried and did not exert himself to help others nor did he take pride in the wear of his uniform or physical condition but the SGT felt termination so close to the applicant's ETS should have been looked over closely.

j. The applicant's chain of command recommended discharge with an under honorable conditions (General) discharge. On 2 July 1991, the appropriate approval authority approved the separation of the applicant, in the rank of PV2, with an under honorable conditions (General) discharge.

k. On 11 July 1991, he was discharged accordingly. His DD Form 214 shows he completed 3 years, 11 months, and 18 days of active service. He was discharged for misconduct - commission of serious offense, his characterization of service was under honorable conditions (General), his separation code was JKQ, and his reentry code was 3. He was awarded or authorized the:

- Army Service Ribbon
- National Defense Service Medal

- Combat Infantryman Badge
- Army Achievement Medal
- Southwest Asia Service Medal with 2 Bronze Service Stars

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service and update his narrative reason for separation. He contends he experienced Other Mental Health Issues 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 (RA) on 24 July 1987, 2) the applicant was counseled on three occasions from August 1990 to May 1991 for failure to complete the company run (14 August 1990), failure to meet physical fitness standards (10 May 1991), and failing to make the physical training run and being overweight (14 May 1991), 3) a Record of Trial by Summary Court-Martial dated 20 February 1991 documented he was found guilty for dereliction in his performance of duty for failing to report to his security position, 4) the applicant received a company grade Article 15 in October 1990 for leaving his post while on guard duty at the Division while in Saudi Arabia, 5) the applicant's commander notified him he was initiating separation under Army Regulation (AR) 635-200, Chapter 14-12c Commission of a Serious Offense for receiving a summary court-martial for sleeping on guard duty while in a war time situation, receiving an Article 15 for quitting his post without being properly relieved while in a time of war, and repeated counseling for physical training failure. On 11 July 1991 he was discharged for misconduct-commission of a serious offense, 6) during his service he received several awards and badges, most notably the Combat Infantryman Badge, Army Achievement medal, and Southwest Asia Service Medal with 2 Bronze Service Stars.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Limited in-service medical records were available for review as part of the applicant's application. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A DA Form 3822 (Report of Mental Status Evaluation) dated 30 May 1991 was completed as part of the applicant's administrative separation. It shows he was

psychiatrically cleared for any administrative action deemed appropriate by command and met retention standards in accordance with (IAW) AR 40-501. All elements of his MSE fell within normal limits. A Report of Medical Examination dated 30 May 1991 shows he had no medical conditions and was qualified for separation. Item number 42, psychiatric, was documented as 'normal' on clinical evaluation. His Report of Medical History completed for Chapter on 30 May 1991 shows the applicant marked 'yes' to 'depression or excessive worry.' In the remarks section the provider noted the applicant was 'worried about this chapter.' There were no other in-service medical records available for review.

d. The applicant's service record shows he served in Saudia Arabia from 11 September 1990 to 08 April 1991. Review of the applicant's counseling for failure to meet physical fitness standards dated 10 May 1991 documented that the company standards for physical fitness were higher than the Army due to his being in a combat MOS with the unit expectation noted as a total score of 240 and 80% in each event. It was noted that the applicant has failed all company and battalion runs since returning from Iraq. A statement was provided by the applicant's team leader as part of his recommendation for separation. The NCO stated that the applicant has had problems with motivation, particularly in reference to unit runs, but noted a change in the applicant's behavior indicating that he noticed the applicant used to try; however, that he no longer tries.

e. Review of JLV shows that the applicant is 100% service-connected through the VA, 70% for Anxiety Disorder. The applicant underwent a Compensation and Pension (C&P) examination on 10 October 2022 and was diagnosed with Unspecified Anxiety Disorder. The applicant appeared to be referred for BH treatment through the VA due to screening positive for depression on 31 August 2022. An intake completed on 30 September 2022 diagnosed him with Anxiety Disorder, Unspecified. It was documented that the applicant endorsed often feeling nervous, on edge, difficulty controlling worry, worrying about different things, difficulty relaxing, feeling restless, and becoming easily annoyed or irritable. He also endorsed anhedonia, difficulty sleeping, changes in appetite, low self-esteem, and difficulty concentrating. Collateral information was gathered from the applicant's wife at the time of the visit and it was documented that she reported a change in the applicant's behavior upon his return from deployment, notably self-isolation and irritability. A follow-up session dated 14 October 2022 documented the applicant often felt like he was waiting for the worst to happen while deployed; however, the provider noted due to lack of a Criterion A trauma and negative PCL-5, he did not meet criteria for PTSD. He completed individual treatment for anxiety on 20 January 2023 wherein it was indicated his symptoms were improved. He was prescribed Sertraline in January 2023 for management of his symptoms which was later changed to Venlafaxine for anxiety. The applicant was enrolled in group therapy for anxiety in June 2023 and completed the group treatment on 22 March 2024.

f. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service and update his narrative reason for separation. He contends he experienced Other Mental Health Issues that mitigates his misconduct. The applicant's available military treatment records available for review were void of any BH diagnosis or treatment history. At the time of his separation physical, the applicant endorsed 'depression or excessive worry' and it was documented he was experiencing anxiety due to his chapter separation. Since his discharge, the applicant has been diagnosed and 70% service-connected through the VA for Unspecified Anxiety Disorder.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected through the VA for Unspecified Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected through the VA for Unspecified Anxiety Disorder. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. Although the applicant's military medical records were void of any BH diagnosis or treatment history, he has been 70% service-connected with Unspecified Anxiety Disorder since being discharged from the military. Although there is evidence in the record that the applicant was counseled once prior to his deployment for failure to complete the unit run, a statement by his Team Leader at the time of separation indicates at some point during the applicant's time in service there was a change in his behavior, noting that he used to try and at the time of the applicant's separation documented that he no longer tried. The applicant's misconduct included sleeping on guard duty while in a war time situation, receiving an Article 15 for quitting his post without being properly relieved while in a time of war, and repeated counseling for physical training failure. As there is an association between anxiety, difficulty sleeping, being easily fatigued, and avoidance behaviors with falling asleep on duty, leaving his post, and physical training failure, there is a nexus between his diagnosis of Unspecified Anxiety Disorder and the reason(s) for discharge. As such, BH mitigation is supported.

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 record and medical review, the Board carefully considered the advising official finding an association between anxiety, difficulty sleeping, being easily fatigued, and avoidance behaviors with falling asleep on duty, leaving his post, and physical training failure, there is a nexus between his diagnosis of Unspecified Anxiety Disorder and the reason(s) for discharge.

2. The Board found the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board noted, the applicant post service accomplishments and his community service. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of sleeping on guard duty while in a war time situation, receiving an Article 15 for quitting his post without being properly relieved while in a time of war, and repeated counseling for physical training failure. The Board agreed the applicant completed 3 years, 11 months, and 18 days of active service and was provided an under honorable conditions (general) characterization of service discharged for misconduct. 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.

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.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) prescribed the policy for enlisted separations.

a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier'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 5 establishes policy and prescribes procedures for separating members for Secretarial authority convenience of the government. Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

c. Chapter 14 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case. Paragraph 14-12c provided for the separation of a Soldier due to commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the Manual for Court-Martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JQK is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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.

6. 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 (TBI); 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. 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.

7. 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 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.

8. 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//