

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20240000231

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge to honorable or general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)
- Associate of Science in Business Administration Diploma (photocopy)
- Medical Records (134 pages)

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 AR20130018263 on 20 June 2014.

2. The applicant states in effect, he is requesting an upgrade of his under other than honorable conditions discharge to honorable or general, under honorable conditions. At the time of discharge, he was 20 years old and suffering from mental and emotional trauma due to combat and toxic exposure during Operation Desert Shield/Storm (Gulf War 1990 – 1991). He was absent without leave (AWOL) for about four (4) days after his leave following his return home from the Gulf War.

3. The applicant provides:

a. A VA Form 21-4138, showing in Section II (Remarks), the applicant requests the VA to review his “overall” military record and service to country to gain eligibility for VA disability benefits and compensation.

b. A photocopy of his Associate of Science in Business Administration Diploma from Virginia College, awarded on 9 December 2018.

c. His medical records consisting of 134 pages, for the period of approximately 14 March 2023 through 14 March 2024.

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

a. He enlisted in the Regular Army on 11 May 1989.

b. He served in Saudi Arabia from 14 September 1990 to 5 April 1991.

c. A DD Form 458 (Charge Sheet), dated 11 December 1991, indicated that court-martial charges were preferred on the applicant for three specifications of being absent without leave (AWOL) for the following periods:

- on or about 20 September 1991 until on or about 23 September 1991
- on or about 4 October 1991 until on or about 29 October 1991
- on or about 2 December 1991 until on or about 2 December 1991

d. On 18 December 1991, after consulting with legal counsel, the applicant requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he had not been subjected to coercion with respect to this request for discharge, and had been advised of the implications that are attached to it
- he is guilty of the charge against him or of a lesser included offense
- he desires no further rehabilitation
- he has no desire to perform further military service
- the maximum permissible punishment if found guilty
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life
- he may apply to the Army Discharge Review Board or the Army Board for Correction of Military Record for upgrading

e. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10, for the good of the service. He would be issued an under other than honorable conditions discharge.

f. On 3 January 1992, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 6 months, and 24 days of active service with 28 days of lost time. He was assigned separation code JFS and the narrative reason for separation is listed as "For the Good of the Service," with reentry code 3. It also shows he was awarded or authorized the:

- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Marksman Marksmanship Qualification Badge with Grenade Bar
- Air Assault Badge
- Army Achievement Medal
- Southwest Asia Service Medal with two bronze service stars

5. On 13 December 1993 and 26 July 1996, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 20 June 2014, the ABCMR rendered a decision in Docket Number AR20130018263. The Board found the applicant's record shows he was charged with three specifications of being AWOL, offenses for which he could have been tried by court-martial and punished with a punitive discharge under the Uniform Code of Military Justice. All requirements of law and regulation were met, and his rights were fully protected throughout his discharge process. Based on his periods of AWOL, his service clearly did not meet the standards of acceptable conduct and performance of duty for Army personnel. Therefore, there is an insufficient basis upon which to grant the requested relief. 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.

7. By regulation (AR 635-200), a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial.

8. 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.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and

accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 3 January 1992 discharge characterized as under other than honorable conditions. He had indicated on his DD 149 that PTSD is related to this request. He states:

“At the time of discharge, I was 20 years old, suffering from mental and emotional trauma due to combat action and toxic exposure during Operation Desert Shield/Storm (Gulf War 1990-1991).”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the Regular Army on 11 May 1989 and was discharged under other than honorable conditions on 3 January 1992 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Discharge for the Good of the Service.

d. A Charge Sheet (DD form 458) shows the applicant was charged with three periods of absence without leave (AWOL): 20-23 September 1991, 4-29 October 1991, and 2 December 1991.

e. On 18 December 1991, the applicant voluntarily requested discharge for the good of the service under provisions in chapter 10 of AR 635-200. The Commanding General of the 101st Airborne Division (Air Assault) and Fort Campbell approved his with the direction that he discharged under other than honorable conditions and be reduced in rank to Private E-1.

f. No contemporaneous medical documentation was submitted with the application and his period of service predates the EMR. The submitted documentation is from the VA -2023 and 2024 - and it shows the applicant had been diagnosed with PTSD.

g. From a behavioral health encounter on 27 November 2023:

Mr. [Applicant] is being seen today seeking referral for Individual Psychotherapy and Medication Assessment stemming from PTSD related symptoms with comorbid depression/anxiety from his original tour of duty in Iraq and Saudi Arabia.”

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? PTSD

(2) Did the condition exist or experience occur during military service? YES

(3) Does the condition or experience actually excuse or mitigate the discharge?
YES: As the condition is associated with avoidant behaviors, it fully mitigates the three periods of AWOL which led to the applicant's discharge with an under other than honorable characterization of service.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. The evidence shows the applicant was charged with commission of offenses (three counts of AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he 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 separation processing.

b. 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 the applicant had a condition or experience that may excuse or mitigate the discharge and as the condition is associated with avoidant behaviors, it fully mitigates the three periods of AWOL which led to the applicant's discharge with an under other than honorable characterization of service. Based on this finding, the Board determined that given his AWOL, his service clearly does not rise to the level required for an honorable discharge; however, a general, under honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

c. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20130018263 on 20 June 2014. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 3 January 1992 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

■

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 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. An honorable discharge is a separation with honor. 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. 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. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial.

2. 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

4. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5. 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//