

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20240000304

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Letter, dated 11 October 2023

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 AR20170013967 on 15 May 2019.
2. As a new argument, the applicant states, at that time of his life he was self-medicating with hashish and alcohol. He has since learned better ways to handle his post-traumatic stress disorder (PTSD) and has been sober for almost 25 years. He went to college and earned his associate and bachelor's degrees.
3. The applicant enlisted in the Regular Army on 30 January 1990.
4. The applicant served in Southwest Asia from 18 December 1990 to 30 April 1991.
5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 24 September 1991, for wrongfully using marijuana, on or about 15 September 1991. His punishment consisted of reduction to private/E-1, forfeiture of \$100.00 pay per month for two months, 45 days of extra duty, and 45 days of restriction.
6. The applicant's immediate commander notified the applicant on 15 October 1991 of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c, by reason of misconduct. As the specific reason, the commander cited the

applicant's wrongful use of hashish. The applicant acknowledged receipt of the notification on that same date.

7. The applicant consulted with counsel on 17 October 1991 and was advised of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He was advised he could submit statements in his own behalf. He elected not to submit a statement.

8. The applicant's immediate commander formally recommended the applicant's separation, prior to the expiration of his term of service, under the provisions of AR 635-200, Chapter 14-12c, by reason of misconduct. The commander further recommended the issuance of an under honorable conditions (General) discharge.

9. On 18 October 1991, the intermediate commander recommended approval of the proposed separation action.

10. Subsequently, the separation authority approved the recommended separation action, waived the rehabilitative transfer requirements, and directed the issuance of a General Discharge Certificate.

11. The applicant was discharged on 8 November 1991, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct-abuse of illegal drugs. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as under honorable conditions (General), with separation code JKK and reentry code RE-3. He was credited with 1 year, 9 months, and 9 days of active service. He was awarded or authorized the following:

- Army Commendation Medal
- National Defense Service Medal
- Army Service Ribbon
- Southwest Asia Service Medal with two bronze stars
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M-16) and Grenade bar

12. The ABCMR reviewed the applicant's request for an upgrade of his characterization of service on 15 May 2019.

a. In the processing of the case, the Army Review Boards Agency (ARBA) clinical psychologist rendered a medical advisory. The psychologist stated, in effect, there was some evidence the applicant's deployment experiences were related to his misconduct. The stressors and anxiety related to being in a deployed environment can be associated with substance use for self-medication purposes.

b. After reviewing the application, supporting documents, and Department of Defense (DoD) liberal consideration guidance, the Board determined that based upon the type of misconduct and the applicant receiving a general discharge, there was no error or injustice which warranted changing the applicant's characterization of service. The Board denied his request for relief.

13. The applicant provides a letter from the VA, dated 11 October 2023, and an accompanying disabilities ratings list which show the applicant has a 70 percent (%) service-connected disability rating for PTSD.

14. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. An honorable characterization of service is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration of his request for an upgrade of his under honorable conditions (general) character of service to honorable. 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 30 January 1990; 2) The applicant served in Southwest Asia from 18 December 1990 to 30 April 1991; 3) The applicant accepted nonjudicial punishment on 24 September 1991 for wrongfully using marijuana; 4) The applicant was discharged on 8 November 1991, Chapter 14-12c, by reason of misconduct-abuse of illegal drugs. His service was characterized as under honorable conditions (general); 5) The ABCMR reviewed and denied the applicant's request for an upgrade of his characterization of service on 15 May 2019.

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 VA documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of his deployment while on active service, which mitigates his misconduct. 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 provided evidence the applicant began to engage with the VA in 1999 for symptoms consistent with PTSD related to his combat experiences during Desert Storm. The applicant was diagnosed with service-connected PTSD in 2001. He has been engaged with behavioral health treatment for PTSD and other mental health symptoms intermittently till present. Currently, he continues to be diagnosed with service-connected PTSD (SC 70%).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD as a result of his experiences during his deployment.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did use illegal drugs. This type of avoidant or self-medicating behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing wrongful use of hashish. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding sufficient

evidence to support the applicant had a condition or experience that mitigated his misconduct which led to his discharge, specifically post-traumatic stress disorder as diagnosed by the Department of Veterans Affairs with service-connected PTSD. Based on a preponderance of the evidence, the Board determined relief was warranted.

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 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 9 September 2001 to show an honorable characterization of service.

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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. Section 1556 of Title 10, U.S. Code, 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. 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.

2. AR 635-200, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 PTSD; traumatic brain injury; 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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//