

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20240000324

APPLICANT REQUESTS:

- reconsideration of his previous requests to upgrade his under other than honorable conditions discharge to under honorable conditions (General)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two self-authored letters
- Letter from spouse

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 Numbers:

- AR20100010822 on 30 September 2010.
- AR20230000622 on 30 August 2023

2. The applicant states he should never have been sent overseas. Due to that, he had problems at Fort Sill, OK. He was then sent to Fort Riley, KS for retraining, where he attempted suicide because he was unstable. He was reassigned to Fort Belvoir, VA for re-training. For some reason his paperwork was mixed up and he was accidentally sent overseas. After the mix up his commander called him into the office and said if he made the slightest mistake, he would regret it. He could not handle it, and he was going through a lot. He was told that he needed help and has been in mental wards. The applicant annotated post-traumatic stress disorder (PTSD) and other mental health issues. He provides:

a. A self-authored statement in which he states since his discharge, he has had to be admitted to a psychiatric ward. He requested his medical records from the U.S. Army

Human Resources Command, but they told him they do not maintain his medical records.

b. A self-authored statement in which he states it was his intent to serve honorably. He knows he made mistakes, and he is not trying to blame anyone. He regrets what happened. His father died and he did not have the needed male guidance. He now realizes the decisions he made were based on how others treated him. In any case, he has since suffered from PTSD, which had an impact on his mental capacity. For his sake and the sake of his family, he asks the Board to reconsider his request.

c. A letter from his spouse who states they had been married for over 22 years. She remembers the times he would have black-outs and anger issues, that were related to his military service. Her husband, the applicant, needs help.

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

a. The applicant enlisted in the Regular Army on 7 August 1979.

b. Summary Court-Martial Order Number 23, issued by Headquarters, 214th Field Artillery Brigade, on 2 May 1980 shows the applicant was convicted by a Summary Court-Martial, of the following charges and specifications:

(1) Charge I, one specification of treating with contempt Sergeant DCW, his superior non-commissioned officer while pointing his M-16 rifle at him in a contemptuous manner.

(2) Charge II, one specification of having knowledge of a lawful order issued by Sergeant DCW to get rid of the marijuana cigarette, an order which it was his duty to obey, did on 8 April 1980, fail the same.

c. The court sentenced him to a reduction to private E-1, forfeiture of \$299.00 pay per month for one month, and confinement at hard labor for 30 days.

d. On 2 May 1980, the convening authority approved the sentence and ordered it be executed. The U.S. Army Confinement Facility, Fort Sill, OK was designated as the place of confinement or elsewhere as competent authority may direct.

e. The applicant's DA Form 2-1 (Personnel Qualification Record – Part II) shows he was reassigned to the re-training Brigade, Fort Riley, KS as a trainee, on or about 13 May 1980.

f. At Fort Riley, on 5 June 1980, the applicant accepted nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) for being drunk and disorderly in the unit on 31 May 1980. His punishment consisted of forfeiture of \$50.00 pay.

g. The applicant's DA Form 2-1 further shows he was "enroute to Fort Belvoir, VA" on 16 July 1980, and "enroute to Germany on 27 October 1980." He would serve in Germany from 14 November 1980 to on or about 17 March 1982.

h. On 20 January 1982, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully possession of 14 grams, more or less, of marijuana in the hashish form.

i. On 2 February 1982, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ the possible effects of an Under Other than Honorable Conditions Discharge if his request was approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In his request, he acknowledged/understood:

(1) He was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He also understood that submitting this request for discharge he acknowledge that he is guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

(2) He had been advised and understand the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he will be deprived of many or all Army benefits that he may be ineligible for many, or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

(3) He understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

j. On 12 March 1982, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Other Than Honorable Conditions Discharge Certificate.

k. Consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of AR 635-200, Chapter 10 and

ordered the issuance of an Other Than Honorable Conditions Discharge Certificate and the applicant's reduction to private/E-1.

I. The applicant was discharged from active duty on 19 March 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, Conduct Triable by Court-Martial with an under other than honorable conditions characterization of service. He was assigned Separation Code JFS and Reenlistment Code 3/3B/3C. He completed 2 years, 6 months, and 22 days of active service and he had lost time from 2 to 22 May 1980. He was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), Army Service Ribbon, and the Overseas Service Ribbon.

4. On 5 October 2010, the Board denied his request for an upgrade of his discharge. The Board stated:

a. The applicant's record shows he was charged with the commission of an offense (possession of marijuana) punishable under the UCMJ with a punitive discharge. Discharges under the provisions of chapter 10 of AR 635-200 are voluntary requests for discharge in lieu of trial by court-martial. The applicant voluntarily, willingly, and in writing, requested discharge from the Army in lieu of trial by court-martial. All requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process.

b. The applicant was discharged with a UOTHC characterization of service. Therefore, he was reduced from SPC to the lowest enlisted grade of PV1. The applicant was advised of the effects of a UOTHC discharge. He was afforded the opportunity to submit statements in his own behalf, but he declined. The applicant's service record shows he accepted nonjudicial punishment under Article 15, UCMJ for being drunk and disorderly and he was convicted by a summary court-martial of treating a senior NCO with contempt and failure to obey a lawful order.

c. An UOTHC discharge was normally appropriate for a Soldier discharged under chapter 10. It appears the separation authority determined the applicant's overall service did not meet the standards of acceptable conduct and performance of duty to warrant a general discharge. Although the applicant contends that he was young at the time he was discharged, his age is not sufficiently mitigating to warrant relief in this case.

5. On 30 August 2023, the Board reconsidered his request for an upgrade of his discharge. He indicated that he had other mental health issues.

a. Prior to adjudicating his case, the Army Review Boards Agency Behavioral Health (BH) provider reviewed the records and indicated that based on available

information, that there is insufficient evidence that the applicant had an experience or condition during his time in service. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends his misconduct was related to Other Mental Health Issues.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant contends his misconduct was related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history for the applicant during service. Post-service records showed the applicant diagnosed with GAD (Generalized Anxiety Disorder) and MDD (Major Depression Disorder) in July 2023, however, the records do not associate the applicant's diagnosis with military service, and instead suggest symptoms developed post-service. In absence of documentation supporting the applicant met diagnostic criteria for a BH disorder during service, there is insufficient evidence to support his misconduct was mitigated by an Other Mental Health Issues, and insufficient evidence to support an upgrade of his discharge characterization.

b. 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.

(1) Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had an experience or condition during his time in service. The Board noted, the opine found the applicant's records was void of any BH diagnosis or treatment history during his service. Post-service records showed the applicant diagnosed with GAD and MDD in July 2023, however, the records do not associate the applicant's diagnosis with military service, and instead suggest symptoms developed post-service.

(2) The Board determined there is insufficient evidence of in-service mitigating factors for the misconduct to weigh a clemency determination. The applicant provided no evidence of post-service achievements or character letters of support that would attest to his honorable conduct that might have mitigated the characterization and provided the Board consideration for clemency. Based on the facts and circumstances, the Board agreed 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 discharge to an under honorable (general) discharge. Therefore, the Board denied relief.

#### 6. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request(s) to upgrade his characterization of service from under other than honorable conditions to under honorable conditions (general).

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 7 August 1979.
- Summary Court-Martial Order Number 23, issued by Headquarters, 214th Field Artillery Brigade, on 2 May 1980 shows the applicant was convicted by a Summary Court-Martial, of the following charge(s) and specification(s):
- Charge I, one specification of treating with contempt Sergeant DCW, his superior non-commissioned officer while pointing his M-16 rifle at him in a contemptuous manner.
- Charge II, one specification of having knowledge of a lawful order issued by Sergeant DCW to get rid of the marijuana cigarette, an order which it was his duty to obey, did on 8 April 1980, fail the same.
- The court sentenced him to a reduction to private E-1, forfeiture of \$299.00 pay per month for one month, and confinement at hard labor for 30 days.
- At Fort Riley, on 5 June 1980, the applicant accepted nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) for being drunk and disorderly in the unit on 31 May 1980. His punishment consisted of forfeiture of \$50.00 pay.
- The applicant's DA Form 2-1 further shows he was "enroute to Fort Belvoir, VA" on 16 July 1980, and "enroute to Germany on 27 October 1980." He would serve in Germany from 14 November 1980 to on or about 17 March 1982, in MOS 52C, Utilities Equipment Repairer.
- On 20 January 1982, court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of wrongfully possession of 14 grams, more or less, of marijuana in the hashish form.
- On 2 February 1982, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ the possible effects of an Under Other than Honorable Conditions Discharge if his request was approved, and of the procedures and rights available to him. Following this consultation, the applicant

requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.

- The applicant was discharged from active duty on 19 March 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, Conduct Triable by Court-Martial with an under other than honorable conditions characterization of service. He was assigned Separation Code JFS and Reenlistment Code 3/3B/3C.
- On 5 October 2010, the Board denied his request for an upgrade of his discharge.
- On 30 August 2023, the Board reconsidered and denied his request for an upgrade of his discharge.

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, "he should never have been sent overseas. Due to that, he had problems at Fort Sill, OK. He was then sent to Fort Riley, KS for retraining, where he attempted suicide because he was unstable. He was reassigned to Fort Belvoir, VA for re-training. For some reason his paperwork was mixed up and he was accidentally sent overseas. After the mix up his commander called him into the office and said if he made the slightest mistake, he would regret it. He could not handle it, and he was going through a lot. He was told that he needed help and has been in mental wards." The applicant marked post-traumatic stress disorder (PTSD) and other mental health issues as related to his request.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any medical documentation from his time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant did not provide any medical documentation substantiating his assertion of multiple psychiatric hospitalizations. However, his VA electronic medical record shows the applicant was provided with behavioral health services starting 19 July 2023, when he presented to the VA requesting to establish psychiatric and mental health services due to irritability and anger. The applicant was assessed and diagnosed with Depressive Disorder and Generalized Anxiety Disorder. He was started on medication for his symptoms and provided with an appointment for behavioral health services. During his intake appointment, the applicant shared he was prompted to seek services due to an altercation with his son, resulting in the police being called. He further discussed his discharge from military service and how he perceives it as a hinderance since he is ineligible for VA benefits. The applicant was provided with monthly individual therapy and medication management, with a focus on improving his anger management and emotional regulation. The applicant evidenced

significant improvement during his episode of care, with a note dated 17 April 2024 indicating, "he responds differently now to situations of possible conflict and does not react to provocation, preferring now to keep the peace rather than initiate conflict".

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is no evidence the applicant had a BH condition during military service that mitigates his misconduct.

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 and OMH. However, he provides no rationale, index trauma, or indication for his contention of PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation of any BH condition, and the applicant did not identify any condition existed or experience occurred during military service other than the charges preferred against him and his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. A review of the record was void of any BH diagnosis or treatment history for the applicant during service and the VA has not service-connected the applicant for any BH condition. The applicant presented to the VA over forty years post-military service due to familial stressors. He was diagnosed with Generalized Anxiety Disorder and Depressive Disorder, unrelated to his military service with his symptoms developing post-military service. During his episode of care the applicant's symptoms significantly improved and there is no evidence the symptoms were present during his time in service.

#### BOARD DISCUSSION:

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 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 charged with possession of marijuana, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and



designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding no evidence of a behavioral health condition. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states 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 that 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.

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 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 (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. 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. 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. 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. 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

6. 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//