

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240000609

APPLICANT REQUESTS: the spouse of a deceased former service member (SM) requests the following:

- In effect, correction of her husband's DD Form 214 (Certificate of Release or Discharge from Active Duty) by restoring his rank, upgrading his character of service, amending his reentry (RE) code, and revising the regulatory authority and narrative reason for his separation so it reflects a medical discharge
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Letter
- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)
- Marriage Certificate
- Court Order for Name Change
- Last Name Change Document
- Death Certificate

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 deceased former SM's service records are unavailable for review; however, the applicant has provided a copy of the former SM's DD Form 214.

- The DD Form 214 offers sufficient information to evaluate those requests pertaining to the former SM's separation

- The Board cannot, however, adequately address her request to restore his rank without knowing what rank he held prior to the date of rank listed on his DD Form 214 (20 December 1990), and by what authority he was reduced
- As a result, that portion of the applicant's request will not be further addressed in this record of proceedings

3. The applicant states, in effect:

- Her husband enlisted in the Regular Army in February 1990, deployed to Southwest Asia during the Gulf War, and was discharged in January 1992; he completed a little over 1 year and 10 months of active duty service
- During his separation physical, her husband stated he had been hospitalized for post-traumatic stress disorder (PTSD)
- The Army separated him with a general discharge under honorable conditions, based upon paragraph 14-12b (A Pattern of Misconduct), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
- His DD Form 214 lists his rank as private (PV1)/E-1, his RE Code as "RE-3," and his narrative reason for separation as "Misconduct – Pattern of Misconduct"
- She and the deceased former SM married in 2006; he died in 2008
- The applicant asked the VA for dependency and indemnity compensation (DIC), but they denied her request because her husband had not completed the required 24-months' of active duty service
- The applicant maintains her husband's PTSD caused his adverse discharge, and that he received treatment for his PTSD after leaving the Army; additionally, the PTSD led to her husband's death
- At the time of his death, her husband was a mental health worker in a nursing school, and he had maintained hopes of upgrading his RE code so that he could reenter the military

4. The applicant provides:

a. VA Letter, dated 19 September 2023:

- VA disapproved the applicant's request for DIC
- The former SM did not complete 24 months of active duty service

b. Separation Physical Documents, dated 20 December 1991:

(1) SF 93 reflects the following:

- Item 11 (Have You Ever Had or Have You Now) – former SM reported having trouble sleeping, felt depression or excessive worry, and experienced "nervous trouble"

- Item 16 (Have You Ever Been Treated for a Mental Condition?) – former SM wrote, "Treated for PTSD at (civilian hospital and U.S. Air Force Base) from approximately 20 October 1991 to 26 November 1991"

(2) SF 88 shows the following:

- Item 42 (Psychiatric) – marked as "Normal," with the comment, "Present exam normal – prior situational depression"
- Item 73 (Notes) – "Medical Record not available to reviewing officer"
- Item 77 (Examinee) – former SM reported as qualified for separation

5. The DD Form 214 provided by the applicant shows the following:

- Item 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – PV1/E-1
- Item 12 (Record of Service):
  - Item 12a (Date Entered AD (active duty) This Period) – 27 February 1990
  - Item 12b (Separation Date This Period) – 30 January 1992
  - Item 12c (Net Active Service This Period) – 1 year, 10 months, and 21 days (includes 13 days of lost time)
  - Item 12h (Effective Date of Pay Grade) – 20 December 1990
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon, National Defense Service Medal, Southwest Asia Service Medal with two bronze service stars, and two marksmanship qualification badges
- Item 18 (Remarks) – "Service in SWA (Southwest Asia) 910112 TO 910626"
- Item 24 (Character of Service) – under honorable conditions (General)
- Item 25 (Separation Authority) – AR 635-200, Paragraph 14-12b
- Item 26 (Separation (separation program designator (SPD)) Code) – "JKM"
- Item 27 (RE Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Misconduct – Pattern of Misconduct"
- Item 29 (Dates of Time Lost During This Period) – 6 to 18 December 1991

#### 6. MEDICAL REVIEW:

a. The applicant, the spouse of the deceased former service member (FSM), is applying to the ABCMR requesting an upgrade of the FSM's under honorable conditions general characterization of service, a change to his narrative reason for separation, and a medical discharge. She contends the FSM experienced PTSD that mitigates his misconduct and warrants a medical discharge. 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 FSM's service records are unavailable for review. However, the applicant has provided a copy of the FSM's DD Form 214; 2) The FSM date of entry to active duty was 27 February 1990; 2) The FSM deployed to Southwest Asia 12 January-26 June 1991; 3) 5) The FSM was discharge on 30 January 1992, Chapter 14-12b-for pattern of misconduct. His service was characterized under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the FSM's available military service records. The VA's Joint Legacy Viewer (JLV) and military records for the FSM provided by the applicant were also examined.

c. The applicant asserts the FSM was experiencing PTSD while on active service, which mitigates his misconduct and warrants a medical discharge. There was evidence the FSM reported during his separation physical, on 20 December 1991, that he had experienced or was experiencing trouble sleeping, depression/excessive worry, and nervous trouble. He also reported receiving treatment for PTSD at Mercy Hospital and Wright Patterson AirForce Base from approximately 20 October-26 November 1991. There was insufficient evidence the FSM engaged in six months or more of behavioral health treatment without improvement, placed on a permanent psychiatric profile, or was ever found to not meet retention standards from a psychiatric perspective for a mental health condition including PTSD while in active service.

d. A review of JLV provided insufficient evidence the FSM was diagnosed with service-connected PTSD or any other mental health condition.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the FSM had a mental health condition that warrants a medical discharge. In addition, there is insufficient evidence surrounding the events which resulted in the FSM's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct and warrants a medical discharge. The FSM also reported being treated for PTSD during his separation physical.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct and

warrants a medical discharge. The FSM also reported being treated for PTSD during his separation physical.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition including PTSD that warrants a referral to DES to be assessed for a medical discharge. The FSM did report being treated for PTSD during his separation physical. However, was insufficient evidence the FSM engaged in six months or more of behavioral health treatment without improvement, placed on a permanent psychiatric profile, or was ever found to not meet retention standards from a psychiatric perspective for a mental health condition including PTSD while in active service. In addition, there is insufficient evidence surrounding the events which resulted in the FSM's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends the FSM was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

#### 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 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.

- Restoring the FSM's rank on his DD Form 214. Deny: The Board determined, based upon the available evidence that there was no error or injustice with the rank he received at the time of his discharge and denied relief.
- Upgrading the FSM's character of service. Deny: The Board notes that the specific facts and circumstances surrounding the FSM's discharge is not available. However, upon review of the available information, the Board concurred with the medical advisory official who found insufficient evidence surrounding the events which resulted in the FSM's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Based on the all the available evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate and denied relief.

- Amending the FSM's reentry (RE) code. Deny: The Board determined, based upon the available evidence that there was no error or injustice to the RE code the FSM received at the time of discharge and denied relief.
- Amending the FSM's "Reason and Authority". Deny: The Board determined, based upon the available evidence, there was no error or injustice to the FSM's reason and authority he was discharged under and denied relief
- Amending the FSM's "Narrative Reason for Separation" to reflect a medical discharge. Deny: The Board notes that the specific facts and circumstances surrounding the FSM's discharge is not available. However, upon review of the available information, the Board concurred with the medical advisory official who found insufficient evidence to support the FSM had a mental health condition that warrants a medical discharge or insufficient evidence the FSM was diagnosed with service-connected PTSD or any other mental health condition. Based on the all the available evidence, the Board concluded that the narrative reason for separation the applicant received upon separation was appropriate and denied relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct and warrants a medical discharge. The FSM also reported being treated for PTSD during his separation physical.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct and warrants a medical discharge. The FSM also reported being treated for PTSD during his separation physical.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition including PTSD that warrants a referral to DES to be assessed for a medical discharge. The FSM did report being treated for PTSD during his separation physical. However, was insufficient evidence the FSM engaged in six months or more of behavioral health treatment without improvement, placed on a permanent psychiatric profile, or was ever found to not meet retention standards from a psychiatric perspective for a mental health condition including PTSD while in active service. In addition, there is insufficient evidence surrounding the events which resulted in the FSM's discharge to provide an appropriate opine on possible mitigation as the result of his mental health condition or experience. Yet, the applicant contends the FSM was experiencing a

mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

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:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :            | :            | :            | GRANT FULL RELIEF    |
| :            | :            | :            | GRANT PARTIAL RELIEF |
| :            | :            | :            | GRANT FORMAL HEARING |
| XX           | XX           | XX           | 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.



X

//SIGNED//

CHAIRPERSON

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. Title 10, U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense.

(2) Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Section II (Secretarial Authority), paragraph 5-3 (Policy). The separation of enlisted personnel for the convenience of the Government was the prerogative of the Secretary of the Army and was to be accomplished only by his/her authority. The separation of any enlisted member of the Army under this authority will be based on

Secretary of the Army determination that separation was in the best interests of the Army.

c. Chapter 14 (Separation for Misconduct), paragraph 14-12b (A Pattern of Misconduct) stated commanders could separate Soldiers when they showed a pattern of misconduct involving acts of discreditable involvement with civil or military authorities, and/or displayed conduct that was prejudicial to good order and discipline..

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

5. AR 635-5-1, in effect at the time, stated Soldiers separated under the provisions of paragraph 14-12b, AR 635-200, received an SPD of "JKM (JKE)"; the associated narrative reason for separation was "Misconduct – Pattern of Misconduct."

6. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for enlistment into the Regular Army. Table 3-6 (Armed Forces Reenlistment Eligibility (RE) Codes – Regular Army RE Codes) included the following:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army
- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JKM" had a corresponding RE code of "3."

8. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Physical Disability Evaluation System (PDES), and implemented chapter 61 (Retirement or Separation for Physical Disability), Title 10, U.S. Code. The regulation set forth policies, responsibilities, and procedures that governed

the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. Chapter 3 (Policies) stated the mere presence of impairment did not alone justify a finding of unfitness because of physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the requirements of the Soldier's duties, as required by his or her office, rank, grade or rating.

b. Chapter 4 (Procedures). Commanders or medical authority could refer Soldiers into the DES when there was evidence a medical condition/disability was inhibiting a Soldier's ability to perform his/her duties.

(1) Medical authority convened an medical evaluation board (MEB) to document the Soldier's medical status and determine whether the Soldier met medical retention standards, per AR 40-501 (Standards of Medical Fitness). Those Soldiers who failed medical retention standards were referred to a physical evaluation board (PEB) for a fitness determination.

(2) PEBs investigated the nature, cause, degree of severity, and probable permanency of the Soldier's disability, evaluated the Soldier's physical condition against the physical requirements of the Soldier's grade/rank and military occupational specialty, and then submitted findings and recommendations as to the Soldier's disposition.

(3) If the Soldier was entitled to disability benefits, the PEB decided the rating for each compensable disability using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD), as modified by the regulation's Appendix B (Army Application of the VASRD). The percentage ratings were to reflect the severity of the Soldiers' disabling condition(s) at the time of the rating.

(4) Final disposition could include the Soldier being returned to duty or separated under the following circumstances:

- With or without severance pay, depending on whether the disability was incurred in the line of duty, and for all cases where the combined disability rating was 20 percent or less
- Retired, when the combined disability rating was 30 percent or higher

9. 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.

10. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); 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 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 misconduct that led to the discharge.

11. 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, 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.

12. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. 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.

//NOTHING FOLLOWS//