

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20240000726

APPLICANT REQUESTS: reconsideration of his prior request for:

- an upgrade of his under other than honorable conditions discharge to honorable
- a change in the narrative reason for separation and respective separation code
- as a new request, restoration of his rank to specialist (SPC)/E-4

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

- DD Form 149 (Application for Correction of Military Record)
- Two Department of Veterans Affairs (VA) Forms 21-10210 (Lay/Witness Statement)
- VA Letter, 2 May 2023
- VA Rating Decision, 1 May 2023
- Medical Records (60 pages)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR2002083070 on 29 May 2003 and AR20150018639 on 6 June 2017.

2. The applicant states:

a. After returning from deployment for Operation Desert Focus, he experienced mental and emotional changes that eventually led to his separation from the Army. He became increasingly irritable and started having aggressive outbursts towards fellow soldiers, family members, complete strangers, and military doctors. He began missing formations and days of work and withdrew himself from activities he used to enjoy before deployment. He was constantly on high alert, avoided public places and big crowds due to fear of potential harm to himself and his family.

b. His sleep was erratic and infrequent due to nightmares, insomnia, and even fear of falling asleep. Since his discharge, he currently has a VA rating of 90% disability due

to service-connected post-traumatic stress disorder (PTSD) that went undiagnosed during his time in service. He is currently receiving mental health and medical treatment from the VA for his ongoing symptoms. He believes that his actions that led to his separation from the Army were a direct result of his undiagnosed PTSD.

3. The applicant provides:

a. Witness statements of his character prior to and following his service from his daughter and wife indicated the applicant was loving, hardworking, and happy prior to his deployment. His attitude changed following his deployment to Saudi Arabia, as he described events that he described as “scary,” such as the bombing of the Khobar towers where he witnessed blood splattered on the walls, and the people verbalizing they wanted them all dead. He appeared to develop trust issues over the years and became more isolated. He is more easily angered, irritated, and on guard. He avoided public places, such as the children’s awards ceremonies and sporting events due to his fear of crowds. He subsequently developed insomnia and his nightmares are horrible.

- Ms. GE, Daughter – 3 October 2023
- Mrs. JSP, Spouse – 3 October 2023

b. A VA letter, dated 2 May 2023 notified the applicant of his most recent rating for PTSD rated at 30% effective 24 December 2021.

c. A VA Rating Decision, dated 1 May 2023 outlined the reasons for the decision which led to the 30% PTSD service connected rating which included:

- anxiety
- chronic sleep impairment
- depressed mood
- difficulty in establishing and maintaining effective work and social relationships
- mild memory loss
- occupational and social impairment

d. His medical records (60 pages) for treatment received from the VA from approximately 14 November 2022 through 3 October 2023.

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

a. Having had prior service in the Texas Army National Guard, he enlisted in the Regular Army on 8 May 1996.

b. His DA Form 2-1 (Personnel Qualification Record) shows he was assigned to Korea on approximately 29 June 1999. It also shows in Block 21 (Time Lost) the applicant was absent without leave (AWOL) from approximately 21 October 1999 to 15 August 2000.

c. A DA Form 4187 (Personnel Action) shows the applicant surrendered to military control at Fort Sill, OK on 15 August 2000 and his duty status changed from dropped from unit rolls to present for duty, returned to military confinement. Block 5 (Grade or Rank) listed his rank as SPC.

d. A DD Form 458 (Charge Sheet) shows on 16 August 2000, court-martial charges were preferred on the applicant for one specification of being AWOL from on or about 21 October 1999 to on or about 15 August 2000.

e. On 18 August 2000, after consulting with legal counsel he requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an under other than honorable conditions discharge
- 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 apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters
- he elected not to undergo a physical evaluation prior to his separation

f. On 15 February 2001, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by courts-martial under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private/(E-1).

g. On 7 September 2001, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years, 4 months, and

22 days of active service with 902 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.

5. On 13 November 2002, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason for his discharge.

6. On 29 May 2003, the ABCMR rendered a decision in Docket Number AR2002083070. The Board found in order to justify correction of a military record the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant has failed to submit evidence that would satisfy this requirement. The Board further determined the evidence presented was sufficient to warrant partial relief by adding his prior inactive service, his foreign service; by showing he was awarded the Army Service Ribbon; and to show he completed his first full term of service by amending item 18 to show he had "Continuous Honorable Active Service From" 8 May 1996 Until 11 May 1998" and he had an "IMMEDIATE REENLISTMENT 12 May 1998." A DD Form 215 (Correction to DD Form 214) was issued on 1 July 2003.

7. On 6 June 2017, the ABCMR rendered a decision in Docket Number AR20150018639. The Board found 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. The characterization of service he received was commensurate with the reason for his discharge. The evidence of record further confirms that his SPD and RE codes were assigned based on his discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200, chapter 10. The Board denied his request for relief.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

9. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

10. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

11. 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.

12. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable and a change to the narrative reason for separation. He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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 8 May 1996 after having had prior service in the Texas Army National Guard.
- The applicant was assigned to Korea on 29 June 1999, and he was AWOL from 21 October 1999 to 15 August 2000 for which he had court martial charges preferred against him. He requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200, Chapter 10.
- The applicant was discharged on 7 September 2001 and completed 6 years, 4 months, and 22 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts after return from Operation Desert Focus, he experienced mental and emotional changes, which included symptoms of PTSD, that mitigates his misconduct. A VA Rating Decision letter dated 2 May 2023 was provided, and it showed a disability rating of 30% for PTSD. There was a document that appeared to be medical documentation indicating that the "husband" called during the medical visit and was verbally abusing the patient (presumably the applicant's wife), and the Captain/medical doctor stated that he reprimanded the husband during the call with the possibility of involving his unit, if needed. There were 60 pages of VA medical documentation, which will be summarized below. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant initiated care with the VA in October 2022 and was started on an antidepressant medication by his primary care provider due to report of irritability impacting his relationships. He also endorsed nightmares and sleep difficulty. He engaged mental health treatment through primary care mental health, and he was seen for medication management and therapy. He reported symptoms of PTSD including, hypervigilance, hyperarousal, avoidance, sleep difficulty, and irritability, and he attributed these symptoms to his time in service and deployment to the middle east. Behavioral interventions were utilized and medication was changed to a different antidepressant, but symptoms did not improve and medication created side effects. His diagnosis was Adjustment Disorder with depression and anxiety. He was referred to psychiatry and the Mental Health Clinic in April 2023 and completed an intake. He reported continued PTSD symptoms, including emotional numbness and feeling faint at the sight of blood, and he reported his military related trauma as "deployed to Saudi Arabia in 1996- assigned to safety checks. Initially developed fear of crowds." He was given a diagnosis of PTSD with a medication adjustment and a referral to a group for understanding the effects of trauma, which he did not attend. Between April and December 2023, he had seven encounters with psychiatry where medication changes to improve sleep were made. He continued to experience sleeplessness despite trials on an antipsychotic used for sleep, a hypnotic (Ambien) with dose increases, and an anxiolytic. In a therapy session in December 2023, he reported trauma exposure, which included witnessing a truck blowing up and the aftermath of the explosion, including people being killed. He was referred to a sleep psychologist, and the intake was conducted on 5 February 2024. However, the applicant cancelled six appointments that were scheduled in April with this provider. He followed up with the psychiatrist on 31 May 2024 and reported continued sleep difficulty despite multiple medication trials, and it was noted that he had been rehired by the Post Office. Prescription records show he is currently prescribed prazosin (for nightmares), bupropion (for mood), and zolpidem (for sleep).

e. The applicant is 100% service connected for several physical health conditions and 30% disabled due to PTSD. An Initial PTSD Disability Benefits Questionnaire dated 25 April 2023 was reviewed, and it showed the applicant endorsed the requisite number of symptoms for a diagnosis of PTSD. He reported a deployment to Saudi Arabia in 1996-1997 where he witnessed the aftermath of the bombing of Khobar Towers, including bodies of deceased service members, and a suicide bomber who exploded a tank truck at the entry point he was guarding.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience 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 he had undiagnosed PTSD at the time of the misconduct. He has been diagnosed and treated for PTSD symptoms through the VA, and he is 30% service connected for the condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the applicant has been diagnosed and treated for PTSD by the VA, and he is service connected for the condition. The applicant's misconduct of being AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the basis for separation can be mitigated.

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 records and medical review, the Board considered the advising opinion finding sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine found the applicant's misconduct of being AWOL can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events.

2. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for 11 months. The Board noted the applicant letters of support from his family, however the provided no post service achievements for the Board to weigh a clemency determination. Notwithstanding the medical opine, the Board found the applicant's behavioral health could not outweigh the misconduct of almost 12 months of AWOL. The Board found that the applicant's narrative reason and separation code was not in error or unjust. Furthermore, the Board agreed, the applicant accepted the Chapter 10 in Lieu of Court Martial and the restoration of his rank to specialist (SPC)/E-4 is without merit. The Board found relief is not 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 found 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 to amend the decision of the ABCMR set forth in Docket Number AR2002083070 on 29 May 2003 and AR20150018639 on 6 June 2017.

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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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

2. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

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

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

4. 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.

5. 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.

6. 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 based on 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.

7. 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//