

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20240000888

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of his under honorable conditions discharge (General)
- authorized awards and decorations not previously listed

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

- DD Form 149 (Application for Correction of Military Record)
- Army Achievement Medal Certificate
- Army Commendation Medal, Permanent Orders 117-01
- Army Commendation Medal, Permanent Orders 190-3
- Certificate of Achievement
- Driving Rodeo Certificate
- Outpatient Psychiatrist Evaluation
- DD Form 214, 24 August 1992 (Member 1 and 4)

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 applicant states he is requesting an upgrade of his discharge to honorable based on being misdiagnosed or left untreated for his illness. Additionally, he served honorably on his first enlistment and some of his awards were omitted from his DD Form 214. It takes time to truly understand there are things happening in your life that you cannot explain. He seeks the correction for the opportunity to be medically evaluated. He believes if he had been assessed for post-traumatic stress disorder (PTSD) in 1992 things could have been different for him then and now. He would like the record corrected to show his awards based on his outstanding service on several missions and the upgrade be granted for his outstanding service to the U.S. Army and

country. He was young and did not receive support from his leadership with the discharge. He has continued to offer assistance to others in similar positions.

3. The applicant provides the following documents:

a. On 20 January 1991, the applicant was given an Army Achievement Medal Certificate, for outstanding support at a training area. No permanent order number was listed.

b. On 9 May 1991, the applicant was given an Army Commendation Medal, Permanent Orders 117-01, for exceptionally meritorious service in support of military operations.

c. On 3 July 1991, the applicant was given an Army Commendation Medal, Permanent Orders 190-3, for exceptionally meritorious service as a motor vehicle operator.

d. A Certificate of Achievement was given to the applicant for personal contribution to operation Desert Shield/Desert Storm, the date is illegible.

e. On 3 July 1991, the applicant was provided a certificate and recognized as the first place winner at the Driving Rodeo, Safety Awareness Day for the 5 ton and M923.

f. On 21 August 2023, the Life Healing Center completed a psychiatric evaluation that shows the applicant was evaluated and treated for PTSD.

g. Multiple DD Forms 214 were provided, a DD Form 214 (member 1 copy), and two illegible copies of the applicant's member 4 copies all for the service period ending 24 August 1992.

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

a. He enlisted in the Regular Army on 15 August 1988.

b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Saudi Arabia from 8 January 1991 through 27 April 1991. It also shows in Block 9 (Awards, Decorations, & Campaigns):

- Army Service Ribbon
- Overseas Service Ribbon
- National Defense Service Medal
- German Marksmanship Badge (Bronze)
- Southwest Asia Service Medal with 3 bronze service stars

- Kuwait Liberation Medal – Kuwait
- Kuwait Liberation Medal – Saudi Arabia
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

c. On 23 April 1992, he accepted the following nonjudicial punishments for the below listed specifications. His punishment included reduction to private (PV2)/E-2 and forfeiture of \$440.00 pay per month for two months.

- willfully disobeying an order from a noncommissioned officer (NCO)
- wrongfully disobeying a posted sign to not drive a vehicle more than 2.5 tons on a particular road
- operating a 5-ton tractor trailer in a reckless manner by driving more than 60 miles per hour (MPH) in a 30 MPH zone and causing the vehicle to jack knife off the road

d. On 10 June 1992, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was mentally responsible, able to distinguish right from wrong, and had the mental capacity to understand and participate in any proceedings.

e. On 16 June 1992, the applicant underwent a medical examination for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination),
- SF 93 (Report of Medical History)

f. On 7 August 1992, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, for patterns of misconduct. The specific reasons for his proposed recommendation were based upon receipt of an Article 15, being disrespectful to a superior commissioned officer and failure to repair.

g. On 13 August 1992, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

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- he is ineligible to apply for enlistment in the Army for 2 years after discharge

h. The immediate commander initiated separation action against the applicant for patterns of misconduct. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

i. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, paragraph 14-12b for patterns of misconduct. He would be issued a general, under honorable conditions discharge.

j. On 24 August 1992, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years and 10 days of active service. He was assigned separation code JKM and the narrative reason for separation listed as "Misconduct-pattern of misconduct," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Army Lapel Ribbon
- National Defense Service Medal
- German Marksmanship Badge (Bronze)
- Overseas Service Ribbon
- Southwest Asia Service Medal with 3 bronze service stars
- Kuwait Liberation Medal
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

5. A review of the applicant's record confirms he is eligible for awards that are not recorded on his DD Form 214. The awards will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as patterns of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions characterization of service. He contends he experienced Posttraumatic Stress Disorder (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 15 August 1988, 2) he served in Saudi Arabia from 08 January 1991 through 27 April 1991. The applicant's DA Form 2-1 shows he received several ribbons, medals and awards, most notably the Southwest Asia Service Medal with 3 bronze service stars, and Kuwait Liberation Medals (Kuwait and Saudi Arabia), 3) the applicant received nonjudicial punishment on 23 April 1991 for willfully disobeying an order from a noncommissioned officer (NCO), wrongfully disobeying a posted sign to not drive a vehicle more than 2.5 tons on a particular road, and operating a 5-ton trailer in a reckless manner by driving more than 60 miles per hour (MPH) in a 30 MPH zone causing the vehicle to jack knife off the road, 4) on 07 August 1992, the applicant's commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200, Chapter 14-12b, for patterns of misconduct. The reasons for the proposed recommendation were based on the Article 15 for being disrespectful to a superior commissioned officer and failure to repair, 5) the applicant was discharged on 24 August 1992 under the provisions of AR 635-200, Chapter 14-12b, patterns of misconduct.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Limited military health records were available for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's in-service medical and service records were reviewed. On 10 June 1992, the applicant underwent a mental status evaluation in conjunction with his separation. The DA Form 3822-R shows he met retention standards IAW AR 40-501, Chapter 3, was mentally responsible, able to distinguish right from wrong, and had the mental capacity to understand and participate in any proceedings. On 16 June 1992, the applicant underwent a medical examination for the purpose of administrative separation which indicated he was generally in good health. Item number 42, psychiatric, was documented as normal on clinical evaluation. His Report of Medical

History completed as part of his separation physical on 16 June 1992 showed the applicant did not indicate any BH-related concerns. Review of the applicant's service records demonstrates that, in addition to some of the awards noted in the ROP, he won first place in the driving at the Rodeo Schweinfurt Safety Awareness day on 20 July 1990. It was also documented that he received a misdemeanor waiver on 11 August 1988 at the time of enlistment.

d. Review of JLV shows the applicant is 100% service-connected through the VA, of which 70% is for PTSD. The applicant underwent a Compensation & Pension (C&P) examination on 20 November 2023. The applicant was diagnosed with PTSD (noted as due to combat) and Alcohol Use Disorder, mild, in early remission (noted as secondary to PTSD). The stressors associated with his diagnosis of PTSD were documented as exposure to direct and indirect fire as well as witnessing others get injured and killed during his deployment. Regarding his BH treatment history through the VA, the applicant was referred to Primary Care Mental Health Integration (PCMHI) after screening positive for depression and suicidal ideation on 29 January 2024. The applicant was screened over the phone on 02 February 2024, documenting that he was experiencing ongoing symptoms of depression, PTSD and suicidal ideation. It was documented that the applicant was prescribed Prazosin for his nightmares. He attended an initial intake appointment through the PCMHI clinic on 12 February 2024. The provider documented his depressive and PTSD symptoms (e.g., problems sleeping, fluctuations in appetite, nightmares, flashbacks, avoidance, hypervigilance and irritability). The applicant was diagnosed with PTSD and Unspecified Depressive Disorder. He was referred to psycho-oncology for individual counseling to address depressive symptoms associated with his cancer diagnosis, general mental health for assistance with unresolved trauma symptoms, and a Whole Health for stress management/relaxation group. The applicant engaged in individual and group psychotherapy through 18 June 2024. Review of current medications show the applicant is currently prescribed Seroquel for Major Depressive Disorder.

e. The applicant provided a civilian health record from Life Healing Center PC dated 21 August 2023 as part of his application. It was noted that the applicant reported he had experienced serious trauma during his deployment to Desert Storm. Regarding his symptoms, it was documented that the applicant reported experiencing anxiety, depression, a short temper, flashbacks, hypervigilance, paranoia, isolation, and was triggered by loud noises. He further reported experiencing problems falling and staying sleep, nightmares, seeing dead bodies and hearing voices saying, "I'm going to get you." It was documented that the applicant had no history of psychiatric hospitalization, previous mental health treatment, no history of suicidal ideation or previous attempts, and no history of homicidal ideation. The applicant was diagnosed with PTSD and started on Zoloft for treatment of PTSD, depression, and anxiety. He was also started on Seroquel for paranoia and auditory and visual hallucinations.

f. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. He contends he experienced PTSD that mitigates his misconduct. The applicant's in-service medical records were void of any BH diagnoses or treatment history. Post-discharge, the applicant was diagnosed and 70% service-connected for PTSD through the VA. Review of the applicant's service records demonstrate that he received several accolades, awards, and medals prior to and during his deployment, with no documented history of in-service misconduct prior to his deployment.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected for PTSD through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected for PTSD through the VA. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although the applicant's in-service medical records are void of any BH diagnosis or treatment history, subsequent to his discharge, he was diagnosed and 70% service-connected for PTSD through the VA. Additionally, review of the applicant's available service records demonstrate that he received numerous awards and accolades prior to deployment and no documented in-service history of misconduct prior to deployment. Therefore, this Advisor can reasonably conclude that there was a change in the applicant's behavior post-deployment. As there is an association between irritability, recklessness, a change in behavior and performance, disobeying lawful orders and failure to repair, there is a nexus between the applicant's diagnosis of PTSD and the circumstances that led to his discharge. As such, BH mitigation is supported.

BOARD DISCUSSION:

1. 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 the applicant receiving nonjudicial punishment for disrespect toward a superior commissioned officer and failure to repair. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during

separation. However, the Board reviewed and concurred with the medical advisor's review finding despite the lack on in-service behavioral health diagnosis or treatment history, the applicant has been subsequently diagnosed for service-connected post-traumatic stress disorder through the Department of Veterans Affairs. The advisor reasonably concluded a change in the applicant's behavior post-deployment. Based on the applicant's contention and the medical advisor's review, the Board granted relief.

2. Prior to closing the discussion and in connection with the applicant's request for inclusion of his awards and decorations, the Board noted and concurred with the awards annotated in the administrative note below.

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 15 April 1971 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.

ADMINISTRATIVE NOTE:

A review of the applicant's service records show he is authorized awards not annotated on his DD Form 214 for the service period ending 24 August 1992. As a result, amend his DD Form 214 by deleting the Kuwait Liberation Medal and adding:

- Kuwait Liberation Medal – Kuwait
- Kuwait Liberation Medal – Saudi Arabia
- Army Commendation Medal (2nd Award)

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. 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.
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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
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 post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.
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, traumatic brain injury, 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, 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.

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.

//NOTHING FOLLOWS//