

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240000959

APPLICANT REQUESTS: reconsideration of his previously upgraded characterization of service from under honorable conditions (General) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 12 November 2023
- DA Form 2-1 (Personnel Qualification Record), 12 May 1989
- DD Form 214 (Certificate of Release or Discharge from Active Duty), VOID, 7 March 1996
- DD Form 214, 7 March 1996

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20080000895 on 22 April 2008 and AR20120012326 on 10 January 2013.

2. The applicant states, he apologizes for the indiscretions and is requesting the Board change the under honorable conditions (General) discharge to honorable.

3. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.

4. The applicant enlisted in the Regular Army on 9 May 1986, for a 3-year period. He reenlisted on 21 October 1991, for an additional 4-year period.

5. His DA Form 2-1 (Personnel Qualification Record) shows:

a. He was awarded the military occupational specialty of 88H (Cargo Specialist) and the highest rank he attained was specialist/E-4.

b. He served in Saudi Arabia in support of Operation Desert Shield from 11 August 1990 to 11 August 1991.

c. He served in Somalia from 30 December 1992 to 11 January 1993.

6. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c(2), for misconduct in the grade of E-1 on 7 March 1996. His characterization of service was under other than honorable conditions with separation code of JKK and reentry code of 4. He served 6 years, 9 months, and 29 days of active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Good Conduct Medal
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Joint Meritorious Unit Award
- Army Service Ribbon
- Southwest Asia Service Medal with 3 Bronze Stars
- Kuwaiti Liberation Medal
- Expert Qualification Badge Rifle, M-16
- Expert Qualification Badge with Grenade Bar

7. The Army Discharge Review Board, case AD96-01953, upgraded the applicant's characterization of service from under other than honorable conditions to under honorable conditions (General). The Board determined that the characterization of service was inconsistent with the applicant's faithful and honorable service. The Board noted that the applicant served in Desert Shield and Desert Storm and that his immediate commanders recommended a general discharge. The Board considered all the facts of the case and concluded the applicant's misconduct was mitigated by service of sufficient merit to warrant an upgrade of his discharge. The Board voted to upgrade the characterization of service to under honorable conditions (General) and determined that the reason for discharge was both proper and equitable and voted not to change it.

8. The applicant was re-issued a DD Form 214 showing he received an under honorable conditions (General) characterization of service.

9. On 22 April 2008, the ABCMR reviewed the applicant's request for reinstatement on active duty. The ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice and determined that the overall merits of his case were insufficient as a basis for correction of his records.

10. On 10 January 2013, the ABCMR reviewed the applicant's request for issuance a Purple Heart. The ABCMR determined the evidence presented did not demonstrate the

existence of a probable error or injustice and the Board determined that the overall merits of his case were insufficient as a basis for correction of his records.

11. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previously upgraded characterization of service from under honorable conditions (general) to honorable. The applicant's previous petitions to the ABCMR are summarized in Docket Number(s) AR20080000895 on 22 April 2008 and AR20120012326 on 10 January 2013. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 (RA) on 09 May 1986 and re-enlisted on 21 October 1991, 2) he served in Saudi Arabia in support of Operation Desert Shield from 11 August 1990 to 11 August 1991, 3) he served in Somalia 30 December 1992 to 11 January 1993, 4) the applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200, paragraph 14-12c(2), for misconduct. His characterization of service was under other than honorable conditions (UOTHC) with a separation code of JKK and reentry code of '4.' He was awarded numerous Medals and awards during his time in service, 5) The Army Discharge Review Boards (ARDB) case AD96-01953, upgraded the applicant's characterization of service as it was determined that it was inconsistent with the applicant's faithful and honorable service. The applicant was re-issued a DD Form 214 showing he received an under honorable conditions (general) characterization of service. 6) on 22 April 2008, the ABCMR reviewed the applicant's request for reinstatement on active duty and his request was denied. 7) on 10 January 2013, the ABCMR reviewed the applicant's issuance of a Purple Heart and determined that the overall merits of the case were insufficient as a basis for correction of his records.

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. Limited

records were available for review in the electronic military medical record (AHLTA). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited in-service medical records were available for review in JLV from 15 June 1994 through 30 November 1995. There were no in-service BH records available for review.

d. The applicant's VA medical records are extensive and will not be exhaustively summarized. Review of JLV demonstrates the applicant is 100% service-connected for PTSD through the VA. The associated Compensation and Pension (C&P) examination was unavailable for review; however, the VA Rating Decision letter dated 21 April 2005 documented that the applicant's diagnosis of PTSD is a result of his military service. The VA Decision letter also notes that in addition to PTSD, he was diagnosed with Bipolar II Disorder and Schizophrenic Disorder, Paranoid Type and the provider opined that the applicant's ability to achieve recovery and/or a cure is 'nil.' The applicant initiated BH services through the VA on 27 March 1997 requesting help with drug use and depression. He was diagnosed with Major Depression with Psychotic Features and was offered psychiatric admission though declined (it was documented that upon returning to the clinic the following day he agreed to a voluntary psychiatric hospitalization). The provider documented that the applicant reported he received an other than honorable discharge due to drug use. Furthermore, the provider noted that the applicant was treated during active duty at the ADPSY program but was given a general under honorable discharge prior to completion. It was also documented that the applicant reported he was hospitalized during active duty for three weeks at Portsmouth Naval Hospital because of depression and had attempted suicide. [Advisor's Note: In-service medical records corroborating this information were unavailable for review]. A mental health note dated 06 May 2011 documented that the applicant reported he saw a friend getting shot and another blown up during his tours during Desert Storm/Desert Shield though declined to continue speaking about his military experiences. A mental health note dated 28 October 2011 documented the applicant's ongoing symptoms of PTSD to include difficulty sleeping, re-experiencing symptoms (triggered by sounds of nearby jets), nightmares, difficulty being in crowds and isolates self, flashbacks, and survivor's guilt. Records available in JLV show he has also been diagnosed with several non-service connected BH conditions to include Anxiety Disorder, Unspecified, Bipolar Disorder, Unspecified, Cocaine Abuse, Episodic Use, Schizoaffective Disorder, Bipolar Type, Schizophrenia, Unspecified, and Paranoid Schizophrenia, Chronic and continues to receive BH treatment through the VA with his last BH contact dated 17 July 2024 with a note to follow-up with his provider in two months. He is currently prescribed the following BH medications: Risperidone (antipsychotic) and Divalproex (mood stabilizer). The available VA records indicate the applicant has been psychiatrically hospitalized on numerous occasions and also reported numerous suicide attempts.

e. The applicant is applying to the ABCMR requesting a reconsideration of his previously upgraded characterization of service from under honorable conditions (general) to honorable. The applicant indicated PTSD is related to his request. The complete facts and circumstances pertaining to his discharge were unavailable for review in his service records. There were no in-service BH records available for review. Post-discharge, the applicant has been diagnosed and 100% service-connected through the VA for PTSD. The applicant has also been diagnosed and treated for several additional non-service connected BH conditions through the VA which require ongoing treatment. He has been engaged in BH treatment through the VA since 27 March 1997 and records show he has been psychiatrically hospitalized on numerous occasions.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is diagnosed and 100% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is diagnosed and 100% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there were not any in-service BH records available for review, since his discharge, the applicant has been diagnosed and 100% service-connected through the VA for PTSD. While the specific facts and circumstances surrounding his discharge were unavailable for review in his military service records, review of his VA medical records suggest the applicant was discharged from the military due to drug use. This finding is consistent with the separation code noted on the applicant's DD Form 214, JKK, as it is used to document misconduct due to drug abuse as well as Chapter 14-12c(2) of AR 635-200 noting abuse of illegal drugs or alcohol. There is an association between self-medicating with substances and avoidance behaviors, and, as such, there is a nexus between drug use and PTSD. As such, BH mitigation is supported.

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 separated for commission of a serious offense; however, the specific details surrounding his discharge are not in evidence. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention of post-traumatic stress disorder and review the medical advisor's review finding mitigation based on the applicant's self assertion of PTSD concluding that misuse of illegal drugs has a nexus with a behavioral health condition. However, the Board was not convinced without the complete facts of his separation that there was a complete nexus between his misconduct, separation, and self-asserted behavioral health condition. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 amendment of the ABCMR decision rendered in Docket Number AR20080000895 on 22 April 2008 and AR20120012326 on 10 January 2013.

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

d. Chapter 15 (Secretarial Plenary Authority) states Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Separation under this

chapter may be voluntary or involuntary. Separations under this authority will be characterized as honorable or (general) under honorable conditions.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//