

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240000985

APPLICANT REQUESTS: reconsideration of his previous requests for an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) period ending 17 November 1983

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20140010965 on 5 February 2015.

2. As a new contention, the application states he is need of leniency due to error that he made while on active duty. He was suffering from a mental breakdown due to his friend's death in Germany and his father's death before being discharged. He was not in the right frame of mind, but he is now at the mercy of the Board. An upgrade would allow him to make a better life for himself. The applicant marked post-traumatic stress disorder (PTSD) as a condition related to his request.

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

- a. The applicant enlisted in the Regular Army on 22 April 1980.
- b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service) service in Germany from 24 August 1980 to 8 April 1982.
- c. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on two separate occasions, for the following misconduct:

- 16 March 1981 – disrespectful in language toward his superior noncommissioned officer (two specifications) and failing to obey a lawful order; his punishment included reduction to private (PVT), E-1
- 24 February 1982 – absent without leave (AWOL) from 30 December 1981 to 20 January 1982; his punishment included reduction to E-2, suspended for 30 days

d. A DD Form 458 (Charge Sheet) shows charges were preferred on the applicant on 16 August 1983 for one specification of AWOL from on or about 4 December 1982 to on or about 4 August 1983.

e. On 17 August 1983, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). 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 Certificate
- 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 a review of his discharge
- he may expect to encounter substantial prejudice in civilian life

f. On 19 August 1983, the applicant's immediate commander recommended approval of his request for discharge for the good of the service. He recommended an under other than honorable conditions discharge. The commander further noted he personally interviewed the applicant and was informed the applicant took leave following his father's death. He was pretty shaken upon arriving home and submitted a DA Form 4187 (Personnel Action) to request a hardship transfer to Georgia; however, his request was disapproved. The unit initiated a Chapter 5 discharge, but he did not wait for the processing of the separation and was ultimately apprehended by civilian authorities on 4 August 1983.

g. On 7 November 1983, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge

Certificate and reduced to the lowest enlisted pay grade, unless already serving in that grade.

h. On 19 November 1983, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 9 months, and 24 days of active service with approximately 169 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Overseas Service Ribbon
- Army Service Ribbon

4. On 1 July 2024, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his claim PTSD. The applicant was provided in excess of three weeks to submit supporting documentation with a suspense of 29 July 2024. The applicant has not provided a response to date.

5. 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.

6. On 5 February 2015, the ABCMR rendered a decision in Docket Number AR20140010965. The Board found the evidence of record shows the applicant requested a compassionate reassignment and that his request was denied because the Department of the Army determined other family members were available to provide assistance to his mother and that the applicant could contribute financial support from his assigned duty station. The evidence of record also shows that after his request was disapproved, a request for hardship discharge was initiated, but the applicant went AWOL prior to final action being taken on the request. Additionally, the applicant received nonjudicial punishment on two occasions and was found guilty by a summary court-martial. Therefore, in view of the foregoing, there is an insufficient basis for granting the requested relief.

7. By regulation, (AR 635-200) a member may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. The service of members separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

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. 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. He contends he experienced an undiagnosed mental health condition, including 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 22 April 1980.
- The applicant accepted NJP on 16 March 1981 for disrespectful language toward his superior (two specifications) and failing to obey a lawful order, and on 24 February 1982 for being AWOL from 30 December 1981 to 20 January 1982. On 16 August 1983 charges were preferred against him for being AWOL from 4 December 1982 to 4 August 1983, and the applicant requested discharge for the good of the service.
- The applicant was discharged on 19 November 1983 and completed 2 years, 9 months, and 24 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 he was suffering from a mental breakdown following the death of a friend in Germany and his father's death, and he indicated PTSD as a mitigating factor in his misconduct. The application did not include any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initially attempted to utilize VA services in 2015 but was determined to be ineligible. On 10 September 2021 he made a call to the Veterans Crisis Line and reported depression, panic attacks, anxiety, and sleep difficulty following his time in service, and he was contacted by the local Suicide Prevention team where he was provided with information about mental health services in his area. In October 2022 he attempted to utilize VA again due to depression secondary to erectile dysfunction, but he was informed he is ineligible for VA services. On 30 April 2024 he walked-in to the mental health clinic and reported depression, panic attacks, anxiety, and "hearing whispers" with ringing in his ears, and he discussed frustrations with inability to get his discharge upgraded. He denied suicidal

or homicidal ideation and was provided with VSO and legal information as well as community mental health resources.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is no medical or mental health diagnosis from his time in service, and he has sought mental health care at the VA but has no diagnosis.

(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? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The applicant did report experiencing significant family stressors while on active service. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigation for that misconduct found within the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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 for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

2. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised 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.

3. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

5. 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//