

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240001074

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to honorable
- a change in the narrative reason for separation

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

- DD Form 293 (Application for the Review of Discharge or Dismissal from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record), 8 November 2023
- Self-authored Statement, undated
- Diploma (State) College, Bachelor of Science Degree, May 1985
- Toys for Tots Letter, 15 January 2010
- Veteran Information Form and Interview Records
- (State) Police Records Check, 2011
- three (State) College Certificates, 18 May 2012
- 43 pages of Medical Progress Notes, 2023

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 marked post-traumatic-stress disorder (PTSD) and other mental health on his DD Form 149 as conditions related to his request. He states:
 - a. After returning from the Persian Gulf War, he suffered from PTSD and did not know how to deal with it. He came from a large family of five girls and six boys. His mom raised them alone. She kept them focused and pushed them to do well in school and in whatever they did so they could have a better life. He was very good in math. He

went to college and majored in mathematics. He decided to join the Army to see the world and use his GI Bill to further his education.

b. He chose Germany as where he wanted to serve. He loved what he was doing, and his job was fulfilling. By this time, he had gotten married and had a child. In the 1990s he was transferred to 32nd Armor Division, Fort Hood. He went to NCO School and was promoted to sergeant. His sergeant major asked him if he wanted to become an officer because he already had a Bachelor of Science degree, but by this time his unit was being deployed to the Persian Gulf (Operation Desert Storm/Shield).

c. He was on guard duty the night the war started. They were handing out live ammunition, the planes started dropping bombs, and he knew it was life or death. As his unit traveled through the desert towards Iraq, he could smell flesh and saw burned bodies hanging out of tanks. When their mission was over, his unit returned as if nothing happened. After 2 or 3 months everything was a blur. He doesn't know why he started using drugs, but it made him not feel anything. He went AWOL and he still didn't understand why his life changed when he returned to his unit. He received NJP and went AWOL twice more and did not return. He was in the military for 5 years in good standing before this happened. By this time his wife left with his son, and he did not have anything to live for.

d. He used drugs and became homeless. He did not tell his family this was happening to him. He drifted around California and ended up with his mom. He was apprehended and returned to the military for out-processing. All he wanted was more drugs. After leaving the military he used drugs for 13 years and he lived on the street. In 2008 while he was incarcerated, he started having dreams about when he was in the war. He saw a psychiatrist who said he was suffering from PTSD and was given medication. He began putting his life back together. In 2010 he went through a Veterans program that helped him learn to live without drugs. He returned to school and attended narcotics anonymous meetings. He graduated college again in 2012. He currently works for a transportation company. He volunteers with Toys for Tots and helps those with addiction.

3. The applicant provides:

a. A Bachelor of Science Degree in Mathematics completed in 1985.

b. A Toys for Tots letter dated 15 January 2010 indicated the applicant was presented an award for his commitment to the community and children. His commitment enabled them to service 35,294 children.

c. A Veterans Information Form and interview documents completed by the applicant for an assessment of PTSD.

d. A California criminal record history contained in the Bureau of Criminal Information and Analysis files, contains all information meeting dissemination criteria pursuant to California law.

e. Three documents from Palomar College presented in May 2012 show:

- Associate in Arts (AA) Degree – Alcohol and Other Drug Studies
- AA Degree – General Studies, Social and Behavioral Sciences Emphasis
- Certificate of Achievement – Alcohol and Other Drug Studies

f. The Office of the Under Secretary of Defense memorandum, dated 25 August 2017 (aka Kurta Memo), which authorized the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

g. Veterans Administration consultation records consisting of 43 pages dated 2023. These consultation records chronicle his treatment for major depressive disorder, PTSD, and substance abuse, as well as the medications prescribed during this course of treatment.

h. A character reference letter, 23 August 2023, in which Retired Colonel JLS____ discusses his efforts to turn his life around and expresses support for his upgrade attempts.

5. A review of the applicant's service records reflects:

a. On 30 January 1986, he enlisted in the Regular Army for 3 years beginning at grade/pay grade private first class (PFC)/E-3.

b. On 21 January 1988, he reenlisted for 2 years at grade/pay grade specialist (SP4)/E-4.

c. On 23 July 1990, he reenlisted for 3 years at grade/pay grade SP4/E-4, and on 1 September 1990, he was promoted to Sergeant/E-5.

d. He served in Southwest Asia during the Persian Gulf War from 27 September 1990 to 9 March 1991.

e. On 12 September 1991, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from his unit, Headquarters and Headquarters Company, 1st Battalion, 227th Aviation

Regiment, from 12 June 1991 to 17 June 1991; and AWOL from the same unit from 4 September 1991 to 10 September 1991. His punishment consisted of reduction to SP4, forfeiture of \$561.00 pay per month for 2 months, suspended for 90 days; and 20 days of extra duty. He did not appeal this punishment.

f. On 23 September 1991, a bar to reenlistment was imposed against him.

g. On 29 October 1990, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from his unit, Headquarters and Headquarters Company, 1st Battalion, 227th Aviation Regiment, from 1 October 1991 to (date illegible). His punishment consisted of reduction to private/E-1 and 30 days of extra duty. He did not appeal this punishment.

h. DA Forms 4187 (Personnel Action) reflect:

- on 18 June 1995, he was apprehended by civil authorities and returned to military control; his status changed from desertion to returned to military control
- on the same date, his status changed to present for duty

i. On 20 June 1995, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows, while assigned to Headquarters and Headquarters Company, 1st Battalion, 227th Aviation Regiment, Fort Hood, he was charged with one specification of AWOL from on or about 4 November 1991 to 18 June 1995.

j. On 21 June 1995, he elected in writing not to undergo a separation medical examination.

k. After consulting with legal counsel on 22 June 1995, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge

- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so
- he elected not to undergo a physical evaluation prior to separation

l. On the same date his request for excess leave was granted.

m. On 28 June 1995, the Commander, A Battery, Personnel and Support Battalion, Fort Sill, recommended approval of his request for discharge. His commander noted he had one period of AWOL for 1322 days, he was apprehended by civil authorities, and he had three instances of NJP, during this period of service. A third NJP is not contained in the available records.

n. On 7 August 1995, the Chief, Criminal law Division, Fort Sill, recommended approval of his request for discharge.

o. On the same date, the separation approval authority, Commanding Officer, Personnel and Support Battalion, Fort Sill, approved his request with an under other than honorable characterization of service.

p. On 24 August 1995, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial, with a character of service of under other than honorable conditions, a separation code of KFS, and reenlistment code of 3. It further shows he had 1322 days' time lost from 4 November 1991 to 18 June 1995. His DD Form 214 further indicates:

(1) Block 4a (Grade, Rate, or Rank) – PV1.

(2) Block 12 (Record of Service), he completed 5 years, 10 months, and 22 days this period.

(3) Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

(4) Block 18 (Remarks): excess leave of 62 days from 22 June 1995 to 22 August 1995; Member has not completed first full term of service.

q. On 20 October 2010, the Army Discharge Review Board determined his discharge was both proper and equitable and voted not to grant relief for an upgrade of his discharge.

6. A review of the applicant's record confirms administrative entries were omitted from his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

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 consideration 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 30 January 1986 and reenlisted on 23 July 1990.
- The applicant accepted NJP for being AWOL on 29 October 1990 and on 12 September 1991. Court-martial charges were preferred against him for being AWOL from 4 November 1991 to 18 June 1995, and he voluntarily requested discharge in lieu of court-martial.
- The applicant was discharged on 24 August 1995 and completed 5 years, 10 months, and 22 days this period.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts undiagnosed PTSD as a mitigating factor in his

discharge. The application contained VA mental health records from 23 April 2010 through 4 August 2023, which showed diagnoses of PTSD, Major Depressive Disorder, and Cocaine Dependence (in remission). The content of these records will be summarized below. Documents titled RCS Client Information Record with service dates from October 2010 to April 2011, and documentation of the counseling sessions focused on adjustment, psychosocial stressors, and the applicant's military discharge history. 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 engaged care through the VA on 12 March 2010 through the homeless program. He completed a mental health evaluation on 29 April 2010 and was diagnosed with PTSD, Major Depressive Disorder, and Cocaine Dependence, in remission. He reported trauma exposure including a scud missile attack on military barracks, witnessing a vehicle in his convoy hitting a landmine, and seeing enemies being killed/burned alive in tanks. He was started on medications for mood and sleep and was referred for psychotherapy. The applicant completed five sessions of psychotherapy for depression, engaged in group therapy for PTSD, attended medication management visits where medication was adjusted, and he participated in vocational rehabilitation services. Through 2011, documentation showed that the applicant lived in supportive housing, attended Narcotic Anonymous meetings, and began going to school to become a substance abuse counselor. Through an evaluation for housing assistance on 24 January 2012, it was documented that the applicant began using substances about three months after returning from deployment, which led to him going AWOL. He related experiencing escalating substance use and eventually spent about seven years in jail or prison due to drug related charges. He was released from prison in the Fall of 2009 and had been sober for two years. Since 2013, the applicant has engaged in routine follow up with his psychiatrist and is stable on two antidepressants, a sleep medication, and a medication for nightmares. Documentation showed he utilized the VA's housing assistance program and is currently employed, and he has maintained his sobriety.

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 mental health condition while on active service. There is evidence of a history of substance abuse and mental health treatment through the VA, but the number of years between his misconduct and his initial treatment makes it difficult to fully support a nexus. It is this Advisor's opinion that the reported trauma exposure while on active duty partially mitigates his misconduct of being AWOL.

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 are no medical or mental health records from his time in service, but he has been diagnosed with PTSD, Major Depressive Disorder, and Cocaine Dependence (in remission) by the VA starting in 2010.

(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. He reported trauma exposure related to a deployment to Kuwait.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. 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 with PTSD and Major Depressive Disorder by the VA. Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and 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 alone is not sufficient evidence of a fully 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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct being only partially mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 as shown in Administrative Note(s) below.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

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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(S):

A review of the applicant's records shows his DD Form 214 for the service period ending 24 August 1995 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 in Item 18 (Remarks) as follows:

- Delete - "Member has not completed first full term of service."
- Add - "Continuous honorable service from 860130-900722".
- Add - "Immediate reenlistments this period: 860130-881220; 881221-900722".
- Add - "Member has completed first full term of service".

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5, Interim Change, in effect on 2 October 1989, implemented by DODI 1336.1, provided updated instructions for completing the DD Form 214. For item 18 instructions read, this must be the first entry in block 18. Enter list of reenlistment periods for which a DD Form 214 was not issued, if applicable, e.g., "Immediate reenlistments this period: 761218-791001; 791002-821001." However, for soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form 214 was not issued, e.g., 761218) Until (date before commencement of current enlistment, e.g., 821001); then enter the specific periods of reenlistments as prescribed above.

a. In Block 24, characterization or description of service is determined by directives authorizing separation.

b. Block 28, enter the narrative reason for separation as shown in Army Regulation 635-5-1 based on the regulatory or other authority.

c. Block 18: one of the mandatory entries is state whether "SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This information assists the State in determining eligibility for unemployment compensation entitlement. The following guidance will help determine which entry to use:

(1) To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

(2) Routinely, a Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract.

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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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//