

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240001102

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- an in-person appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record)

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 the change in the liberal consideration for Post Traumatic Stress Disorder (PTSD) and mental issues has prompted him to apply for an upgrade of his discharge. His exposure to mental health problems generated actions at the time of his professional service.
3. A review of the applicant's service record shows:
 - a. Having had prior service, the applicant enlisted in the Regular Army on 9 December 1980. He reenlisted on 14 December 1984
 - b. On 22 April 1985, Permanent Orders 49-25 shows the applicant was awarded the Army Commendation Medal.
 - c. On 21 April 1987, Permanent Orders 075-027 show the applicant was awarded the Good Conduct Medal with 3rd clasp.
 - d. On 2 October 1989, the applicant was reported in an absent without leave (AWOL) status and on 1 November 1989, he was dropped from the rolls. He surrendered to military authorities on 1 November 1989.

e. On 31 October 1989, the applicant was afforded the opportunity for a separation medical examination which was voluntary. The applicant did not desire a separation medical examination.

f. A DD Forms 458 (Charge Sheet) dated 1 November 1989 shows, court-martial charges were preferred on the applicant for one specification of being absent without authority from 2 August 1989 to 30 October 1989.

g. On 1 November 1989, the applicant consulted with legal counsel and requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant's rank was listed as specialist private (PVT)/E-1. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more 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 conditions other than honorable
- 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 must apply to the Army Discharge Review Board or the Army Board for the Correction of Military Records for a review of discharge, but there was no automatic upgrading
- he may expect to encounter substantial prejudice in civilian life

h. On 20 November 1989, the chain of command recommended approval of the applicant's request for discharge in lieu of trial by court-martial. He would be issued an under other than honorable conditions discharge.

i. On 22 February 1999, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

j. Orders 333-37, dated 29 November 1989, discharged the applicant from active duty with an effective date of 11 December 1989 and Orders 333-31, dated 29 November 1989, reduced the applicant to private (E-1) with an effective date of 28 November 1989.

k. On 11 December 1989, he was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of chapter 10 of AR 624-200 with an under other than honorable conditions characterization of service. He completed 8 years, 9 months, and 5 days of active service with 87 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 Trial by Court-Martial," with reentry code 3/3B/3C. The Remarks Block

- listed his immediate reenlistment
- did not list his continuous honorable service or whether he completed his first term of service

4. A review of the applicant's record confirms he is eligible for an award and campaign credits that are not recorded on 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.

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. 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 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 or in lieu of trial by court-martial.

7. 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.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 11 December 1989 discharge characterized as under other than honorable conditions. On

his DD Form 149, the applicant has indicated that PTSD and other mental health conditions are related to his request. He states through counsel:

“Exposure to mental health problems generated actions at the time that were not characteristic of previous years of professional service. Changes in the liberal consideration for PTSD and Mental Issues have prompted me to apply for the upgrade.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the Regular Army on 9 December 1980 and was discharged under other than honorable conditions on 11 December 1989 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (26 May 1989): Discharge for the Good of the Service. The DD 214 shows one period of lost time: 2 August 1989 thru 29 October 1989. No period of service in a hazardous duty pay or imminent danger pay is listed.

d. A Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 2 August 1989 thru 30 October 1989.

e. On 1 November 1989, the applicant voluntarily requested discharge in lieu of trial by courts-martial under provisions in chapter 10 of AR 635-200 for the charge of violating Article 86 of the UCMJ: “AWOL 2 AUG 1989 – 30 OCT 1989.” On 31 October 1989, he declined the opportunity to undergo a separation medical examination.

f. No medical documentation was submitted with the application and his period of Service predates the EMR.

g. Review of his records in JLV shows the applicant has received some care at Veterans Hospital Administration (VHA) facilities as a non-service-connected Veteran. A 1 May 2013 psychiatry encounter shows he was on long-term Xanax use for an anxiety disorder he developed in 2005: “Patient developed anxiety during difficult time in 2005 he was in a highly stressful job in computer industry. Patient’s third wife of 11 years was mentally ill. After years of attempts she committed suicide by hanging herself in his closet, he found her. He closed that business and changed jobs.

He has used Xanax three times a day since that time. He never uses more than prescribed. He is agreeable to attending anxiety/stress management class. He denies depressed feelings.”

h. The applicant has no VA service-connected disabilities.

i. Kurta Questions:

- Did the applicant have a condition or experience that may excuse or mitigate the discharge? Anxiety disorder, not otherwise specified; applicant asserts PTSD.
- Did the condition exist or experience occur during military service? No: The onset of the anxiety disorder was in 2005. As for the PTSD, there was no probative evidence submitted, found in the EMR, other electronic records, or in JLV (to include VA endorsement), indicating the applicant has been diagnosed with PTSD.
- Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is insufficient evidence of a behavioral health condition that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry

is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the correction addressed in Administrative Note(s) below, 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 for the period ending on 11 December 1989 to show:

- Continuous Honorable Service from 19801209 to 19841213"
- Member Completed First Full Term of Service

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 upgrading his discharge.

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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 service records show he is authorized additional awards and campaign credits not annotated on his DD Form 214. As a result, amend his DD Form 214 to show the following:

- Army Commendation Medal – permanent orders 49-25, 22 April 1985
- Army Good Conduct Medal with three knot, permanent orders 075-027, 21 April 1987

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 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" 13 August 1976 Until 5 June 1989.

3. Army Regulation 635-5 (Separation Documents, in effect at the time, 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.

4. 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.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

5. 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.

6. 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.

7. 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.

8. 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//