

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20240001231

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Benefits Letter, 28 February 2023
- VA Rating Decision, 22 February 2023

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 AR201000014303 on 9 November 2010.

2. The applicant states his post-traumatic stress disorder (PTSD) is service connected due to an incident which occurred during military service. His behavioral issues were never treated by the Army and subsequently led to his character of discharge.

3. The applicant provides:

a. A DD Form 214 for his active service period from 14 March 1979 through 9 December 1982.

b. A VA letter dated 28 February 2023 notified the applicant of his entitlement and the VA decision. The VA Rating Decision dated 22 February 2023 provided details for the reasons he was granted service connection for treatment purposes only under 38 USC Chapter 17 for PTSD.

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

a. He enlisted in the Regular Army 14 March 1979.

b. A DA Form 2627 (Summarized Record of Proceedings Under Article 15, UCMJ) shows he accepted nonjudicial punishment on 7 August 1979 for stealing a t-shirt of a value of about \$6.00 from the American Armed Forces Exchange Service, on about 19 July 1979.

c. A letter of reprimand dated 10 February 1981 shows, the applicant received an official letter of reprimand for conduct unbecoming of a Soldier. On or about 4 December 1981, the applicant signed an official sworn statement with intent to deceive the government into providing funds for property, which was not actually stolen. The acknowledged he read and understood the allegations.

d. Four DA Forms 2627 show he accepted nonjudicial punishment:

- 13 May 1981 – drunk and disorderly
- 21 May 1981 – failure to follow a lawful order
- 12 January 1982 – failure to go to his appointed place of duty
- 22 June 1982 – disrespectful in language toward a superior noncommissioned officer (NCO)

e. A DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant for:

- specification of being absent without leave (AWOL) from on or about 26 August 1982 to on or about 20 September 1982
- one specification of committing an assault upon Specialist (SP4) A.F.F., by pointing at dangerous weapon at him on or about 30 July 1982.

f. On 29 November 1982, 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 expect to encounter substantial prejudice in civilian life

- he waived his right for a physical examination

g. On 1 December 1982, the separation authority approved the applicant's request for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest grade.

h. On 9 December 1982, he was discharged from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service. He completed 3 years, 8 months, and 26 days of active service, with 23 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "For the Good of the Service," with reentry codes 3, 3B. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Good Conduct Medal

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 9 November 2010, the ABCMR rendered a decision in Docket Number AR20190015504. The Board found the applicant's record of indiscipline includes nonjudicial punishment on four occasions and court-martial charges for AWOL and assault. Based on this record of indiscipline and in view of the fact he voluntarily requested discharge to avoid a court-martial that could have resulted in a punitive discharge, his overall record of service did not support the issuance of a general discharge by the separation authority at the time and it does not support an upgrade of his discharge now. The Board denied his requested relief.

7. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, 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.

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 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 9 December 1982 discharge characterized as under other than honorable conditions. On his DD form 293, he has indicated the PTSD and Other Mental Health conditions are issues related to his request. He states:

"PTSD service-connected due to incident which occurred during military service. Behavior after the service-connected event, which was never treated by the Army, directly led to veterans character of discharge."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 14 March 1979 and was discharged under other than honorable conditions on 9 December 1982 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 May 1982): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty pay area. The DD 214 shows a period of time lost under 10 USC § 972 from 26 August 1982 thru 19 September 1982.

d. The applicant received an Article 15 on 7 August 1979 for stealing. He also received Article 15's for failure to repair, failure to obey, and disrespect toward an NCO.

e. On 10 February 1981, the applicant received a Letter of Reprimand for making a false official sworn statement "with the intent to deceive the Government into providing funds for property which was not actually stolen."

f. An 11 November 1982 Charge Sheet (DD Form 458) shows the applicant was charged with a period of absence without leave from 26 August 1982 thru 20 September 1982 and with assaulting a fellow Soldier with a pistol.

g. On 29 November 1982, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200. His request was approved by the Commanding General of the 24th Infantry Division (Mechanized) and Fort Stewart on 1 December 1982.

h. JLV shows the applicant has a 0% VA service-connected disability rating for PTSD. His Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire shows the primary stressor for his service-connected PTSD was the witnessed murder of his cousin while home on leave:

“He related going home on leave from Germany. While he was home, his cousin was shot and killed in the veteran's car and died in his lap. He reported that a guy walked up, shot him, and killed him and was later convicted of the murder. Vet reports that he called and asked for an extended leave and was denied. He stayed anyway to attend the funeral and meet with detectives. He added that is when his military experience started ‘going down.’”

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: PTSD

(2) Did the condition exist or experience occur during military service? Yes: The condition has been service-connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially: Partially: As there is a nexus between PTSD and difficulty with authority figures and avoidant behaviors, his PTSD mitigates the acts of disrespect, disobeying lawful orders, failures to report, dereliction of duty, and AWOL. PTSD does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right so cannot mitigate applicant's stealing, making a false official statement, or assault of a fellow Soldier.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The available evidence shows the applicant was charged with commission of an offense (AWOL and assault) 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.

b. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding sufficient evidence to support that the applicant had a condition or experience that partially mitigates his misconduct. Although there is a nexus between PTSD and difficulty with authority figures and avoidant behaviors and his PTSD mitigates the acts of disrespect, disobeying lawful orders, failures to repair, dereliction of duty, and AWOL; however, PTSD does not interfere with one's ability to distinguish between right and wrong and act in accordance with the right so cannot mitigate applicant's stealing, making a false official statement, or assault of a fellow Soldier. Nevertheless, the Board determined since there is a mitigating condition, even if partial, this warranted an upgrade of the character of service.

c. Therefore, the Board determined although his service did not rise to the level required for an honorable characterization (given his misconduct), a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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 amendment of the ABCMR's decision in Docket Number AR201000014303 on 9 November 2010. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the DD Form 214 for the period of service ending 9 December 1982 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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. 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. 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. 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.
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.

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//