

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240001524

APPLICANT REQUESTS:

- rank restoration from private/E-1 to sergeant/E-5
- retirement for 15 years of service

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

- DD Form 149 (Application for Correction of Military Record), 23 October 2023
- DD Form 293 (Application for the Review of Discharge from the United States), 23 October 2023
- self-authored statement
- Enclosure A – Orders R-06-002395, 26 June 1986
- Enclosure B – Orders R-06-003083, 15 June 1992
- Enclosure B1 – Patient information, 10 December 1992
- Enclosure C – Orders C-01-700007, 7 January 1993
- Enclosure D – Orders R-01-001357, 29 January 1993
- Enclosure E – DD Form 458 (Charge Sheet), 29 January 1995
- Enclosure F – Patient information, 3 March 1994
- Enclosure G – Memorandum, 20 September 1994
- Enclosure H – Patient Progress Report, 20 September 1994
- Enclosure I – How to Deal with Grief article (1)
- Enclosure J – How to Deal with Grief article (2)
- Enclosure K - How to Deal with Grief article (3)
- Enclosure L – Advance Pay Certification/Authorization, 29 July 1992
- Enclosure M – Request pertaining to military records, 13 March 2018
- Enclosure N – State of North Carolina document, 9 July 2012

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 he is requesting relief due to a court-martial he received for two days of being absent without leave (AWOL) following the death of his spouse in 1993. He states pay and allowances were taken and should not have been due to his reduction in rank. He suffers from post-traumatic stress disorder from his spouse's death. His defense during the court-martial was poorly prepared, not strategic, things were not brought up at his court-martial that he believed should have been, he believed he had no chance of winning due to his lawyer not winning a case in 6 months of defending other Soldiers.

a. He additionally provides a seven-page self-authored statement which is available in its entirety for the Board's review. He states before he departed from his unit numerous phone calls and letters were sent regarding his wife's third operation for cancer.

b. When in the process of changing his permanent station, he moved and was never paid for this time. In 1993, his wife passed. He started having suicidal thoughts, he was stressed to the max and everything was getting on his nerves, one morning he woke up and just could not get out of bed. After two days of being severely ill and informing his command, he was told to take all the time he needed to because of his spouse's passing.

c. He was charged with one count of going AWOL in February 1994, which he remembers this charge being dropped because he refused to drive due to the icy road conditions, he did not want to risk hurting himself or others who were driving on the roads.

d. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) and mental health issues are related to his request, as contributing and mitigating factors in the circumstances that resulted in his separation.

3. The applicant enlisted in the Regular Army on 9 August 1976, for a 3-year period. He was awarded military occupational specialty 13B (Cannon Crewmember). He was honorably discharged for the purpose of immediate reenlistment on 5 March 1979 in the grade of E-3. His DD Form 214 (Report of Separation from Active Duty) shows he served 2 years, 6 months, and 27 days of net active service with overseas service in Germany from 24 August 1977 to 15 February 1978.

4. He reenlisted on 6 March 1979 for an additional 3-year period. His DD Form 214 (Certificate or Release or Discharge from Active Duty) shows he was honorably discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 2 (Procedures for Separation), for completion of required service in the grade of E-3. He served 3 years of net active

service with 2 years, 6 months, and 27 days of prior active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Good Conduct Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon
- Sharpshooter (M-16 Rifle)
- Expert (Hand Grenade)

5. On 7 July 1982, he enlisted in the U.S. Army Reserve (USAR) for a 6-year period. He entered active duty in the Active Guard Reserve (AGR) program on 28 July 1986. He conducted an oath of extension on 27 September 1986, for a period of 1 year and 21 days and reenlisted on 27 April 1989, for an additional 6-year period.

6. Four DA Forms 4187 (Personnel Action) show the applicant's duty status changed:

- from present for duty (PDY) to AWOL effective 15 March 1993
- from AWOL to present for duty effective 17 March 1993
- from PDY to AWOL effective 7 February 1994
- AWOL to PDY effective 8 February 1994

7. On 28 July 1994, the applicant received notification from the USAR Personnel Center. He was informed a bar to reenlistment had been imposed under the qualitative management program (QMP). The program required that noncommissioned officers demonstrated professional ability by performance of duty and standards of conduct which set an example for all soldiers. The QMP Board convened on 16 June 1994 and determined that he was barred from reenlistment in the USAR AGR.

8. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 29 January 1995. The relevant DA Form 458 (Charge Sheet) shows he was charged with four specifications of going AWOL and he was referred to a special court martial. On 31 March 1995, he was authorized retention beyond his expiration term of service date for the purpose of court-martial.

9. Before a special court-martial on 22 April 1995 at Fort Bragg, NC, the applicant was found guilty of two specifications of violating the UCMJ, for going AWOL on 15 September 1993 and remaining AWOL until 20 September 1993 and going AWOL on 7 February 1994 and remaining AWOL until 8 February 1994. He was sentenced to forfeiture of \$550.00 per month for six months and reduction to the grade of E-1. The sentence was adjudged on 22 April 1995, approved, and ordered to be duly executed on 23 May 1995.

10. The applicant was discharged on 21 June 1995, under the provisions of AR 635-200, Chapter 4, (Separation for Expiration of Service Obligation) for completion of required active service, in the grade of E-1. His DD Form 214 shows he received an honorable characterization of service. He was credited with completion of 8 years, 9 months, and 2 days of net active service, with lost time from 15 March 1993 to 17 March 1993, from 4 May 1993 to 6 May 1993, from 15 September 1993 to 20 September 1993, from 7 February 1994 to 8 February 1994, and from 22 April 1995 to 29 May 1995. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Lapel Button
- Army Commendation Medal
- Army Achievement Medal (3rd award)
- Army Good Conduct Medal (3rd award)
- National Defense Service Medal
- Noncommissioned Officer's Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge with Driver-W Bar

11. The applicant additionally provides:

a. His activation orders in the AGR with report to Greenville, South Carolina, permanent change of station order for report to Chamblee, Georgia, reassignment orders from Chamblee, Georgia to Winston-Salem North Carolina due to his pending determination of compassionate reassignment, and an additional permanent change of station order reporting to Winston-Salem, North Carolina from Chamblee, Georgia.

b. Medical documentation from 10 December 1992, showing his spouse was on terminal supportive care and was not expected to live more than a few months, the Associate Professor of Medicine wrote a letter on behalf of the applicant to his command requesting he be reassigned closer to his spouse's location for her benefit.

c. Medical documentation showing on 3 March 1994, he was referred to have psychological testing, after psychological testing was complete, he was required three office visits at weekly intervals.

d. Memorandum from the Fort Bragg Counseling Center, dated 20 September 1994, showing the applicant had improved since he entered the Alcohol and Drug Abuse Prevention and Control Program.

e. Patient Progress Report showing he was gained for reassignment, three-page article named "How to Deal with Grief", and his advance pay certification/authorization

request due to wanting to complete all financial business before his departure to his next permanent change of station. Additionally, his request pertaining to his military records showing he requested his official military jacket due to his appeal of military service/claim and an order continuing domestic violence hearing and ex-parte order from the state of North Carolina.

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. Background: The applicant is requesting restoration of his rank from private/E-1 to sergeant/E-5 and military retirement for 15 years of service. The applicant asserts PTSD and OMH as related to his request. This opine will address the applicant's assertion of behavioral health issues but will not address his requests.

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 9 August 1976. He reenlisted on 6 March 1979. On 7 July 1982, he enlisted in the U.S. Army Reserve (USAR). He entered active duty in the Active Guard Reserve (AGR) program on 28 July 1986 and conducted an oath of extension on 27 September 1986. He reenlisted on 27 April 1989.
- Four DA Forms 4187 (Personnel Action) show the applicant's duty status changed:
  - from present for duty (PDY) to AWOL effective 15 March 1993
  - from AWOL to present for duty effective 17 March 1993
  - from PDY to AWOL effective 7 February 1994
  - AWOL to PDY effective 8 February 1994
- On 28 July 1994, the applicant received notification a bar to reenlistment had been imposed under the qualitative management program (QMP).
- Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 29 January 1995. The relevant DA Form 458 (Charge Sheet) shows he was charged with four specifications of going AWOL and he was referred to a special court martial convened by court-martial convening order number 29. On 31 March 1995, he was authorized retention beyond his expiration term of service date for the purpose of court-martial.
- Before a special court-martial on 22 April 1995 at Fort Bragg, NC, the applicant was found guilty of two specifications of violating the UCMJ, for going AWOL on 15 September 1993 and remaining AWOL until 20 September 1993 and going

AWOL on 7 February 1994 and remaining AWOL until 8 February 1994. He was sentenced to forfeiture of \$550.00 per month for six months and reduction to the grade of E-1. The sentence was adjudged on 22 April 1995, approved, and ordered to be duly executed on 23 May 1995.

- Applicant was discharged on 21 June 1995, under the provisions of AR 635-200, Chapter 4, (Separation for Expiration of Service Obligation) for completion of required active service, in the grade of E-1. His DD Form 214 shows he received an honorable characterization of service, with separation code JKB, and reentry code 3.

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 states he is "requesting relief due to a court-martial he received for two days of being absent without leave (AWOL) following the death of his spouse in 1993. He states pay and allowances were taken and should not have been due to his reduction in rank. He suffers from post-traumatic stress disorder from his spouse's death. His defense during the court-martial was poorly prepared, not strategic, things were not brought up at his court-martial that he believed should have been, he believes he had no chance of winning due to his lawyer not winning a case in 6 months of defending other Soldiers."

d. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted a letter from his wife's medical provider, dated 10 December 1992, indicating she was on terminal supportive care and was not expected to live more than a few months. The letter requested command reassign the applicant closer to his spouse's location for her benefit. In addition, a letter dated 3 March 1994, shows the applicant was referred for psychological testing. However, there is no evidence the applicant participated in psychological testing. A Memorandum from the Fort Bragg Counseling Center, dated 20 September 1994, indicates the applicant had successfully completed the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) and was recommended for discharge from the program.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for Mood Disorder. The applicant initially presented for VA behavioral health services in May 2003, due to job loss related to a positive urinalysis. He reported long-standing substance use starting prior to military service that was exacerbated by his wife's death. He reportedly started drinking alcohol at age 14, at age 16 started smoking marijuana, and started using crack cocaine in 1992 after his wife's death. The applicant shared the following legal history: being found guilty of assault on a female in 1982, charges for possession of cocaine that were allegedly dropped, and his issues related to employment that prompted him to seek services. He was recommended for treatment but did not follow through. He scheduled appointments in

September and October of 2007 but did not attend. A psychiatry note dated 25 January 2008, confirmed the above history of substance use and legal issues. The applicant denied any history of trauma and, at the time, denied current substance use. He further reported being jailed for 30 days due to charges of domestic violence. During that encounter he was diagnosed with Rule-Out Mood Disorder, Cocaine Abuse, Alcohol Abuse, and Cannabis Dependence. He was treated with medication and recommended for individual and group therapy. He did not follow-up on treatment recommendations. The record shows he reconnected with behavioral health services in February 2011 and was started on medication for his reported symptoms of depression. The record shows that overall, the applicant was noncompliant with treatment and engaged in an argumentative and combative manner towards treatment providers. A psychiatry note dated 5 September 2012, indicates the applicant was followed for substance abuse and mood disorder. He was noncompliant with treatment and continued to abuse crack cocaine and alcohol. At that time the applicant had communicated threats to his sister which resulted in legal charges and his being unable to return to the home they shared. This appeared to initiate the applicant's issues with homelessness. The VA electronic medical record further shows, between February 2013 and July 2024, the applicant had 28 episodes of care in residential substance abuse treatment or inpatient psychiatric hospitalizations related to substance abuse and mood disorder. The record shows a treatment diagnosis of Substance Induced Mood Disorder, Cocaine Use Disorder, Alcohol Use Disorder, Homelessness, and Antisocial Personality Disorder. His initial admission occurred on 19 February 2013 with a discharge date of 11 March 2013. He was admitted into the Substance Abuse Residential Rehabilitation and Treatment Program (SARRTP). He was voluntarily admitted to SARRTP, however, was discharged due to repeated conflicts with other veterans and treatment staff. Upon discharge he was diagnosed with Cocaine & Nicotine Dependence, Alcohol Abuse, Mood Disorder, and Personality Disorder. On 16 June 2014, he was hospitalized due to suicidal ideation and polysubstance abuse. Upon discharge he was diagnosed with Mood Disorder, Polysubstance Use Disorder, and Depressive Disorder. On 25 June 2014, he was once again admitted into SARRTP but was discharged before completion of the program due to his combative behaviors. Upon discharge he was diagnosed with Cocaine Use Disorder, Alcohol Use Disorder, Tobacco Use Disorder, Nonadherence to Medical Treatment, Adult Antisocial Behavior, Other Specified Personality Disorder, and Substance-induced Mood Disorder. The applicant continued to present for inpatient admissions related to suicidal ideation, mood disorder, substance abuse, familial conflict, and homelessness. Upon his most recent hospital discharge, he was admitted into Domiciliary Care for Homeless Veterans, where he currently resides.

f. A C and P examination dated 15 May 2015, diagnosed the applicant with Unspecified Depressive Disorder and Stimulant (Cocaine) Use Disorder. The clinician opined his cocaine use was secondary to his depression and a mechanism of self-medicating his symptoms.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor the applicant is not diagnosed with PTSD, and, per the clinical documentation, the applicant's mood disorder appears to be substance induced due to his extensive history of substance abuse.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant self-asserts PTSD and OMH.

(2) Did the condition exist or experience occur during military service? Applicant is service-connected for Mood Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Based on the information available, it is the opinion of the Agency Behavioral Health Advisor the applicant is not diagnosed with PTSD, and although the death of his wife while in service likely caused extensive grief, this incident does not meet diagnostic criteria for PTSD. The medical record does indicate the applicant is service-connected for Mood Disorder. However, per the clinical documentation based on repeated residential treatment and inpatient hospitalizations, the applicant's mood disorder appears to be substance induced due to his extensive history of substance abuse. However, as per liberal consideration, applicant's self-assertion of PTSD and OMH merits consideration by the board.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, the military record, and published DoD policy related to liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his length and record of service, the frequency and nature of his misconduct, the outcome of court martial proceedings and the reason for his separation. The Board considered the review and conclusions of the medical advising official and the applicant's service connected diagnosis. The Board found that the applicant's statement regarding PTSD and OBH conditions warrant consideration under liberal consideration policy. However, the Board agreed with the conclusions of the medical advisor finding insufficient evidence of PTSD or other Behavioral Health conditions in-service to mitigate the applicant's misconduct and warrant an upgrade as a matter of liberal consideration. The Board found that his



reduction in rank was a result of his court martial and did not consider the punishment too harsh. Based on a preponderance of evidence, the Board determined that the applicant's rank at the time of separation and the reason for his separation were not in error or unjust.

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.

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 635-8 (Separation Processing and Documents), currently in effect, prescribes that separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the separation document is a synopsis of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. Paragraph 5-6 stated for Block 4: Grade, Rate, or Rank, verify that active-duty grade or rank and pay grade are accurate at time of separation.

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

a. The version in effect at the time provided 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. Chapter 4 (Separation for Expiration of Service Obligation) states a soldier will be separated upon expiration of enlistment or fulfillment of service obligation.

4. Department of Defense Financial Management Regulation DoD 7000.14-R sets forth authority for temporary early retirement authority (TERA). The program was available from 1993 to 2001 for enlisted members with at least 15 years but less than 20 years of active service. The Temporary Early Retirement Authority (TERA) provided the Secretary of Defense a temporary force management tool with which to affect the drawdown of military forces and yet maintain an adequate and effective well trained military force. TERA provides the authority for voluntary retirement of members on active duty with at least 15 years, but less than 20 years of creditable service. An eligible member of the Armed Forces may apply for early retirement under the program and receive an annuity equivalent to 2.5 percent of retired pay base for each year of service completed and a deduction of one percent for each year short of 20 years of 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 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 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 to 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 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, 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.

//NOTHING FOLLOWS//