

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240002678

APPLICANT REQUESTS: reconsideration of her deceased husband, the former service member's (SM), previous request for an upgrade of his dishonorable discharge.

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

- DD Form 149 (Application for Correction of Military Record), 23 January 2024
- Certification of Military Service
- Certificate of Marriage

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 AR1999030079 on 5 January 2000.
2. The applicant, the widow of the SM states she is requesting the upgrade due to the fact the SM had post-traumatic stress disorder (PTSD).
3. The SM's military record is not available to the Board for review. A fire destroyed approximately 18 million service members' records at the National Personnel Records Center (NPRC) in 1973. It is believed that the SM's records were lost or destroyed in that fire.
4. The SM enlisted in the Regular Army on 10 November 1942.
5. On 25 April 1944, the SM was convicted by a general court-martial for the following:
 - escaping from confinement on or about 18 October 1943
 - absenting himself from his organization on or about 18 October 1943 and remaining absent until on or about 12 November 1943
 - feloniously taking, stealing, and carrying away two barracks bags, 12 pairs of shoes, 10 pairs of socks, three drawers, one field jacket, 17 herringbone twill jackets, a value of \$93.97, property of the United States

6. Docket Number AR1999030079, indicates the SM was sentenced to a dishonorable discharge, forfeiture of all pay and allowances, and to be confined at hard labor for 10 years.

7. On 15 March 1945, the SM was discharged with a dishonorable discharge, in the grade of private/E-1, pursuant to his court-martial sentence.

8. On 5 January 2000, the ABCMR denied the SM's request for a discharge upgrade. The ABCMR considered all the evidence, allegations, and information presented by the SM, together with the evidence of record, applicable law and regulations and concluded that the SM failed to submit evidence that would satisfy an upgrade of his discharge, and determined there was no basis for granting the requested relief.

9. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

10. In reaching its determination, the Board can consider the applicant's petition and the SM's service record in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

a. The applicant, the wife of a deceased former service member (FSM), is applying for reconsideration of her previous request for an upgrade of the FSM's dishonorable discharge. She contends the FSM experienced PTSD that mitigates his misconduct. 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: 1) The FSM enlisted in the Regular Army on 10 November 1942; 2) On 25 April 1944, the FSM was convicted by a general court-martial for: A) escaping from confinement; B) absenting himself from his organization from 18 October-12 November 1943; and C) feloniously taking, stealing, and carrying away the property of the United States; 3) On 15 March 1945, the FSM was discharged with a dishonorable discharge, in the grade of private/E-1, pursuant to his court-martial sentence.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the FSM's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts the FSM was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided no evidence the FSM has been diagnosed with a mental health condition including PTSD. He also does not receive any service-connected disability.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant was involved in avoidant behavior such as going AWOL, which could be natural sequelae to including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, there is no nexus between PTSD and the applicant's misconduct of escaping confinement and theft in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends the FSM was experiencing mental health conditions or an experience that mitigated his misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

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. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and the

service member's record of service, the frequency and nature of the service member's misconduct and the reason for separation. The service member was separated for conviction by court-martial for offenses under the Uniform Code of Military Justice. The Board found no error or injustice in the separation proceedings. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support the service member had a condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the service member received upon separation was appropriate.

2. The service member was given a dishonorable discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.
2. Section 1556 of Title 10, U.S. 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
 - a. 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. 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.
4. 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or

the mental health condition was not diagnosed until years later. 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.

5. 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, Boards 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//