

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002916

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge. Additionally, he requests a personal 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 his discharge has taken a toll on his everyday life.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues are related to his request.
4. The applicant enlisted in Texas Army National Guard on 2 May 1980, under the alternate training Program (split option). The applicant entered active duty for initial active duty training on 15 June 1981, for the purpose of completing basic training. He was issued a DD Form 220 (Active Duty Report) for this period of service.
5. On 8 November 1981, the applicant accepted non-judicial punishment under the Texas Code of Military Justice, for being absent from a scheduled unit training assembly (UTA), on 7 November 1981. His punishment included forfeiture of \$10.00.
6. On 8 March 1982, the applicant's commander notified him that he had failed to attend 11 UTAs within a "one year period." Additionally, the applicant was notified that nonobligated enlisted personnel who fail to satisfactorily participate in required Ready Reserve training normally will be processed for a General Discharge.

7. Orders 114-17, issued by the State of Texas, Adjutant General's Department, Austin, TX, reassigned the applicant to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve) effective 13 June 1982, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 7-10m.

8. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his USAR discharge processing.

9. Orders D-04-030207, issued by the USAR Personnel Center, St. Louis, MO, discharged him from the Ready Reserve effective on 1 May 1986, under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations). His service was characterized as under honorable conditions (general).

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

11. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Honorable Conditions (General) to Honorable. He contends that PTSD, TBI and Other Mental Health conditions were related to his request.

2. The ABCMR ROP summarized the applicant's available record and circumstances surrounding the case. The specific facts and circumstances surrounding the USAR discharge are unknown. The applicant enlisted in the Army National Guard 02May1980. He completed a period of active service for basic training 19810615 to 19810812. He received nonjudicial punishment (a fine) for failing to present for inactive duty training 07Nov1981. A March 1982 notification from command advised that the applicant had received 11 unexcused absences within a one-year period from 10Jan1981 to present. He was reassigned to USAR Control Group 13June1982. He was discharged from the Ready Reserve 01May1986.

3. There were no service treatment records available for review. JLV search on a few different days did not yield any VA or DoD treatment records. The applicant self-asserts PTSD, TBI and Other Mental Health conditions.

4. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Under Liberal Consideration, as per ARBA policy, the applicant's self-assertion of PTSD, is sufficient to affirm its existence and it is a mitigating BH condition.

(2) Did the condition exist, or did the experience occur during military service? Yes. Under Liberal Consideration, as per ARBA policy, the applicant's self-assertion of PTSD, is sufficient to affirm its existence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service BH or TBI records. Beyond self-report, there was no evidence that the applicant was experiencing a mental health condition or TBI while in active service. Therefore, there was insufficient medical evidence to support a nexus between a mental health condition or TBI, and his separation. That notwithstanding, the applicant contends that PTSD, TBI and Other Mental Health conditions contributed to his discharge, and under Liberal Consideration, the applicant's contention alone is sufficient for the Board's consideration for the discharge upgrade.

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant failed to attend 11 UTAs within a "one year period." As a result, his chain of command separated him under the provisions of AR 135-178, with his service characterized as under honorable conditions (general). 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 agreed with the medical reviewer's finding insufficient evidence to support that the applicant had a condition or experience 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 evidence, the Board determined that the character of service the applicant received upon separation was 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.

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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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. An honorable characterization of service 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.

b. A general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

5. National Guard Regulation 600-200 (Enlisted Personnel Management) provides for management of enlisted personnel. Chapter 6 of this regulation sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG. It states, in pertinent part, that the separation of a Soldier from the ARNG is a function of State military authorities in accordance with State laws and regulations. Paragraph 7-10 sets the criteria for the discharge of ARNG enlisted personnel with a remaining Reserve obligation and their transfer to the USAR Control Group.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, TBI, 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 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.

8. 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. 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. 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//