

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240002962

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 25 January 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 June 1992
- Patient Health Progress consisting of 4 pages, 2019 to 2023
- Witness statement, 9 December 2023

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 indicates post-traumatic stress disorder as an issue or condition related to his request. He states:

a. After returning home from the Gulf War, he wasn't the same. He became depressed and suicidal. He spoke with the chaplain on several occasions about how he was feeling. There were times he didn't sleep for days, and it affected his marriage. His wife and 2-year-old son left him.

b. His life as he knew it was over and had it not been for the misfire of the weapon he would not be here today. Over the years he has continue to struggle with depression and anxiety.

3. The applicant provides:

a. Four pages of patient treatment notes showing he has received treatment, in part, for generalized anxiety disorder.

b. A witness statement from his former wife, states he was charged once he returned from Operation Desert Storm. He was proud and happy before he deployed but was unable to sleep and was constantly on edge with rage and depression which worsened over time. He would break things in their home, and he no longer took care of himself.

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

a. On 27 February 1989, he enlisted in the Regular Army for 5 years. He attained the rank of specialist 4.

b. On 21 February 1992, his status changed from present for duty (PDY) to absent without leave (AWOL).

c. Permanent Orders 2-15, issued by Headquarters, U.S. Army Air Defense Artillery Center, and Fort Bliss, dated 6 January 1992, awarded him the Army Good Conduct Medal (First Award).

d. On 21 March 1992, he was dropped from the rolls (DFR).

e. On 23 March 1992, his status was changed from DFR to PDY after having surrendered to military control at Fort Bliss.

f. On 2 April 1992, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows, while assigned to 978th Military Police Company, Fort Bliss, he was charged with one specification of AWOL from on or about 21 February 1992 to on or about 23 March 1992.

g. After consulting with legal counsel on 2 April 1992, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge

- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so
- he elected not to undergo a physical evaluation prior to separation

h. On the same date he requested excess leave and his request for excess leave was granted.

i. On 2 April 1992, the Commander, Personnel Support Battalion, Fort Bliss, recommended approval of his request for discharge. His commander noted he had one period of AWOL for 31 days, he surrendered to military authorities, and he had become disillusioned with the military.

j. On 10 June 1992, the Chief, Criminal Law Division, Fort Sill, recommended approval of his request for discharge.

k. On the same date, the separation approval authority approved the applicant's request with an under other than honorable characterization of service and directed he be reduced to the lowest grade.

l. On 30 June 1992, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial, with a character of service of under other than honorable conditions, a separation code of KFS, and reenlistment code of 3. It further shows he had 31 days' time lost from 21 February 1992 to 23 March 1992. His DD Form 214 further indicates:

(1) Block 4a (Grade, Rate, or Rank) – PV1.

(2) Block 12c (Record of Service-Met Active Service this Period), he completed 3 years, 3 months, and 2 days net active service this period.

(3) Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Service Ribbon

- National Defense Service Medal
- Southwest Asia Service Medal with two bronze service stars
- Kuwait Liberation Medal
- Non-Commissioned Officers Professional Development Ribbon
- Army Good Conduct Medal (First Award)

(4) Block 18 (Remarks)- in part: excess leave of 88 days from 2 April 1992 to 30 June 1992

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

6. 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.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He asserts PTSD as related to his request.

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 27 February 1989.
- On 2 April 1992, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows, while assigned to 978th Military Police Company, Fort Bliss, he was charged with one specification of AWOL from on or about 21 February 1992 to on or about 23 March 1992.
- After consulting with legal counsel on 2 April 1992, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- On 30 June 1992, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial, with a character of service of under other than honorable conditions, a separation code of KFS, and reenlistment code of 3. It further shows he had 31 days' time lost from 21 February 1992 to 23 March 1992.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "after returning home from the Gulf War, he wasn't the same. He became depressed and suicidal. He spoke with the chaplain on several occasions about

how he was feeling. There were times he didn't sleep for days, and it affected his marriage. His wife and 2-year-old son left him. His life as he knew it was over and had it not been for the misfire of the weapon he would not be here today. Over the years he has continued to struggle with depression and anxiety." A witness statement from his former wife, states he was changed once he returned from Operation Desert Storm. He was proud and happy before he deployed but was unable to sleep and was constantly on edge with rage and depression which worsened over time. He would break things in their home, and he no longer took care of himself.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. There was no electronic medical documentation available for review and the applicant did not submit any post-service medical documentation substantiating his assertion of PTSD. The applicant does provide a summary of care generated on 16 November 2023 from his medical provider that lists the following active problems being treated by the provider: tear of the medial meniscus, vitamin D deficiency, and hyperlipidemia. The summary does not indicate the applicant is being treated by this provider for any behavioral health condition. However, it does list Generalized Anxiety Disorder as a problem identified by the applicant but there is no evidence that this issue was treated by the provider.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence at this time to support the applicant had a BH condition during military service that mitigates his misconduct.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating his assertion.

h. Per Liberal Consideration guidelines, his contention of PTSD is sufficient to warrant 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. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence at this time to support the applicant had a BH condition during military service that mitigates his misconduct. The opine noted, no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

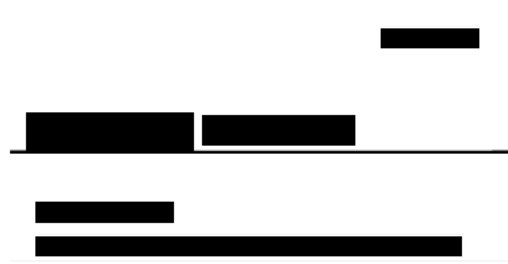
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL for 30 days. The applicant provided no post service achievements or character letters of support attesting to his character. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "For the good of the service – in lieu of court-martial," and the authority, Army Regulation 635-200, chapter 10.

4. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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. 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. 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, 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.

//NOTHING FOLLOWS//