

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240003079

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to honorable
- correction and issuance of a second DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he had honorable service before his reenlistment

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

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 served 6 years in the military from January 1986 to June 1989 (3 years) honorably at reenlistment. He served from July 1989 to May 1992 (3 years) and he received an other than honorable conditions discharge. His DD Form 214 shows from January 1986 to May 1992, 6 years his service was characterized as other than honorable conditions, at the time of discharge. This is not correct, he should have a DD Form 214 that separates his first 3 years as honorable and his second 3 years upgraded to honorable because his DD Form 214 is incorrect. He had to wait almost 3 years to get a decision on his disability because the Department of Veterans Affairs (VA) had to research to find records showing he served honorably. He wants his DD Form 214 corrected. He received an Army Good Conduct Medal for January 1986 through June 1986 which is equal to honorable service. The applicant lists post-traumatic stress disorder (PTSD) as related to his request.
3. The applicant's service record shows the following information:

a. DD Form 4 (Enlistment or Reenlistment Agreement-Armed Forces of the United States) reflects he enlisted in the Regular Army on 28 January 1986.

b. He reenlisted on 9 December 1988.

c. CID Report of Investigation, 4 October 1991 shows between 15 January 1991 and 17 January 1991 the applicant was cited with the offenses of larceny, attempted larceny, bank fraud, and wire fraud. The applicant under false pretenses, telephonically contacted State Federal Credit Union and withdrew funds from the bank accounts of H__ (\$400.00), L__ and S__ (\$100.00). He subsequently transferred the funds to Ms. SA__ via Western Union. The final report states that the investigation is being terminated in that the supporting Staff Judge Advocate (SJA) office is of the opinion that sufficient admissible evidence is available to prosecute the applicant for the cited offenses, that additional investigation would only produce cumulative and unneeded evidence, and that the identification of additional offenses or offenders is unlikely.

d. Court-martial charges were preferred against the applicant on 25 February 1992. His DD Form 458 (Charge Sheet) shows he was charged with:

- stealing U.S. Currency of a value of about \$400.00, the property of FMH__ on or about 15 January 1991
- stealing U.S. Currency of a value of about \$100.00, the property of JBS__ on or about 17 January 1991
- wrongfully executing a scheme to obtain moneys under the custody or control of a State Federal Credit Union, a federally chartered and insured financial institution, by means of false or fraudulent pretenses, to wit: under false pretenses, fraudulently instruct the State Federal Credit Union to wire funds to Western Union on or about 15 January 1991 through 17 January 1991

e. The applicant's first sergeant and commander letters, 6 April 1992 attest to the applicant's be a hard working soldier who exhibits honorable and trustworthy characteristics. The applicant contributed to a superbly organized orderly room and has always been willing to work extra hours to accomplish unit mission. He is definably a team player. He had no discipline problems. He is a sharp Soldier and a consistent performer. They recommended the applicant receive a under honorable conditions (general) discharge.

f. The applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, for the good of the service, in lieu of trial by court-martial. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a under other than honorable conditions discharge and furnished an Undesirable Discharge Certificate.

(2) He elected to submit statements in his own behalf. However, the statement is not available for review.

g. The Staff Judge Advocate (SJA) memorandum, undated shows applicant's chain of command recommended approval of the applicant's voluntary request for discharge with the issuance of a under other than honorable conditions discharge on 17 April 1995.

h. The separation authority approved the discharge action on 15 May 1992 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant be issued a under other than honorable conditions discharge and be reduced to the lowest enlisted pay grade. The court martial charges will be dismissed effective the date of the applicant's discharge.

i. The applicant was discharged on 20 May 1992. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service with separation code JFS and reenlistment code 3. His service was characterized as under other than honorable conditions. He completed 6 years, 3 months, and 23 days of net active service. He was awarded or authorized the following:

- Army Service Ribbon
- National Defense service Medal
- Army Achievement Medal with one oak leaf cluster
- Army Good Conduct Medal
- Expert Marksmanship Qualification Badge Rifle
- Expert Marksmanship Qualification Badge Hand Grenade

j. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. By regulation AR 635-200, Chapter 10 such discharges are voluntary requests for discharge in lieu of trial by court-martial.

4. 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.

5. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 28 January 1986 and reenlisted on 9 December 1988.
- A CID Report of Investigation, 4 October 1991 shows between 15 January 1991 and 17 January 1991 showed the applicant was cited with the offenses of larceny, attempted larceny, bank fraud, and wire fraud.
- Court-martial charges were preferred against the applicant on 25 February 1992, and the applicant voluntarily requested a discharge for the good of the service, in lieu of trial by court-martial.
- The applicant was discharged on 20 May 1992 and completed 6 years, 3 months, and 23 days of net active service.

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 asserts his DD214 is incorrect and should reflect some of his time in service as honorable, and he indicated PTSD as a mitigating factor on his application. Medical documentation from July 1991 indicated that the applicant had experienced a foot injury or surgery, and while hospitalized, he reported memory and disorientation problems. A rule out diagnosis of Factitious Disorder was noted. A letter from a family medicine physician dated 19 September 2019 stated that the applicant experienced traumatic events while in service and that the author believed the applicant had PTSD and depression. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed he initiated mental health treatment in 2019. He reported exposure to trauma while on active duty, and he was diagnosed with Depression and was started on a medication for sleep and anxiety and an antidepressant. He was referred for a PTSD evaluation, and he started PTSD treatment as related to witnessing a soldier drowning and being unable to help him. He has routinely engaged in outpatient therapy and medication management, and at his most recent visit on 14 May 2024 he reported stability on an antidepressant and a sleep medication. VA records show that he is 100% service connected for PTSD and is also rated for three physical health conditions.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Records from his time in service show a possible diagnosis of Factitious Disorder, and the applicant is 100% service connected for PTSD by the VA. He has received mental health treatment since 2019.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of a mitigating mental health condition(s) while on active service. The applicant has received mental treatment for depression and PTSD. However, there is no nexus between his asserted mental health condition, including PTSD, and his misconduct related to larceny, bank fraud, and wire fraud: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his 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 partial relief was 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 petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

2. The Board agreed there is no nexus between the applicant's asserted mental health condition, including PTSD, and his misconduct related to larceny, bank fraud, and wire fraud. Furthermore, the Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the applicant's records.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 20 May 1992 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 860128 UNTIL 881208

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a upgrade of his under other than honorable conditions discharge to honorable.



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.

ADMINISTRATIVE NOTE(S):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) 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

3. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214.

a. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

b. Paragraph 2-4h(18) of the regulation states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JFS (is to be used for RA Soldiers discharged for the good of the service).

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the separation code JFS has a corresponding RE Code of "3."

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

7. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

8. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to

develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

9. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

10. 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 UOTHC 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.

11. 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 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.

12. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

13. Title 10, U.S. Code, section 1556 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//