

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240003758

APPLICANT REQUESTS: in effect:

- upgrade of his under other than honorable conditions discharge
- a change to the narrative reason for his separation
- an appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record), 20 February 2024
- Veterans Administration (VA) Rating Decision letter, 31 January 2024

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 marked on his application that post-traumatic stress disorder (PTSD) is an issue or condition related to his request. He states:

a. He had no issues during his earlier 3 years of Army Reserve service and at the beginning of his active service he had no issues.

b. His first period of absence without leave (AWOL) happened after he broke his left ankle. He was told he had 30 days of convalescence leave. His squad leader went to his house a week later and told him they considered him to be AWOL.

c. Afterwards he was constantly given special duty. He was stuck at the rank of E-4 and passed over several times. He felt they just wanted him gone and he just stopped going back. He was totally demoralized. He felt more like an outcast.

3. The applicant provided a copy of page one of a VA Rating Decision letter, dated 31 January 2024, reflecting he was granted service connection for PTSD for treatment purposes only.

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

a. On 27 August 1977, he enlisted in the U.S. Army Reserve (USAR) for 6 years.

b. On 3 November 1980, after having served 2 years, 10 months, and 29 days, he reenlisted in the USAR for 3 years beginning in pay grade E-1. He understood he would be ordered to active duty within 120 days.

c. On 28 November 1980, he enlisted in the Regular Army for 3 years beginning at pay grade E-1.

d. On 1 September 1981, he was promoted to private first class (PFC)/E-3.

e. On 21 September 1982, he accepted company grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for being AWOL from his unit, B Battery, 1st Battalion, 3d Air Defense Artillery, Fort Campbell, from on or about 2 September 1982 to on or about 8 September 1982. His punishment consisted of reduction to private 2/E-2, and extra duty for 14 days. He did not appeal this punishment.

f. His duty status changed:

- On 1 November 1982 from present for duty (PDY) to AWOL
- On 1 December 1982 from AWOL to dropped from the rolls (DFR)
- On 3 March 1983 from DFR to PDY

g. On 8 March 1983, he was charged with one specification of AWOL. A DA Form 458 (Charge Sheet) shows he was AWOL from his unit, Battery B, 1st Battalion, 3d Air Defense Artillery, Fort Campbell from on or about 1 November 1982 until on or about 3 March 1983.

h. On the same date, he was counselled on the requirements for completion of a medical examination prior to separation; that if he requested a medical examination, a mental status evaluation was required as part of chapter processing. Understanding this provision, he waived a medical examination for his separation processing.

i. After consulting with legal counsel on 10 March 1983, the applicant voluntarily requested discharge for the good of the service, 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 UCMJ, 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 was advised of his right to request a separation physical, but he elected not to do so

j. On 16 March 1983, both his company and battalion commanders recommended approval of his request with an under other than honorable conditions characterization of service.

k. On 24 March 1983, the separation authority approved his request for discharge, directed a characterization of service of under other than honorable conditions, and directed he be reduced to the lowest pay grade.

l. On 11 April 1983, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) 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, and a separation code of KFS. It further reflects he had 7 days' time lost from 2 September 1982—8 September 1982 and 122 days' time lost from 1 November 1982—2 March 1983; and 33 days of excess leave from 10 March 1983—11 April 1983. His DD Form 214 further reflects:

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

(2) Block 12c (Record of Service), he completed 2 years and 5 days net service this period.

(3) Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized: Army Service Ribbon and Expert Marksmanship Qualification Badge with Rifle (M-16).

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service and a change to the narrative reason for his separation. On his application the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 applicant enlisted in the U.S. Army Reserves (USAR) on 27 August 1977. On 28 November 1980, he enlisted in the Regular Army (RA), 2) on 21 September 1982, he accepted nonjudicial punishment (NJP) for being absent without leave (AWOL) from 02 September 1982 to 08 September 1982, 3) on 08 March 1983, he was charged with one specification of going AWOL from 01 November 1982 to 03 March 1983, 4) the applicant was discharged on 11 April 1983 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial, with a character of service under other than honorable conditions and a separation code of KFS.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. The applicant provided a VA Rating Decision Letter dated 31 January 2024 showing that service connection for treatment purposes only was granted for PTSD. The applicant underwent an Initial PTSD VA Compensation and Pension (C&P) examination on 08 December 2023. The provider documented that the applicant met criteria for PTSD and Alcohol Use Disorder (AUD), in early remission. It was

documented that the applicant reported he engaged in counseling at Ft. Campbell in 1982, which he stated he was told he “needed to do” as there were issues with “drinking and being dumb.” Regarding the stressor(s) associated with his diagnosis of PTSD, it was noted that the applicant reported he witnessed a fatal helicopter accident in 1981 in which he attempted to administer CPR and also witnessed a training accident that same year involving a Soldier who was shot and killed.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a potentially mitigating BH condition, PTSD. This Advisor would contend that the applicant’s post-discharge diagnosis of PTSD mitigates his misconduct of going AWOL.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and service-connected through the VA (for treatment purposes only) with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and service-connected through the VA (for treatment purposes only) with PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service medical records available for review. Post-discharge, the applicant has been diagnosed and service-connected for treatment purposes only through the VA with PTSD. As there is an association between avoidance behaviors and going AWOL, there is a nexus between the applicant’s diagnosis of PTSD and misconduct of going AWOL. Thus, BH mitigation is supported.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant’s contentions, his record and length of service, the frequency and nature of his misconduct, the court-martial charges, his request for separation and the character of service he received upon discharge. The Board considered his statement pertaining to PTSD, his service-connected disability determination and the review and conclusions of the Agency medical advisor. The Board found: (1) the applicant has been diagnosed and service-connected through the

VA (for treatment purposes only) with PTSD; (2) in 2024, the applicant was been diagnosed and service-connected through the VA (for treatment purposes only) with PTSD and the service connection establishes that the condition existed during service; (3) while the applicant has been diagnosed and service-connected for treatment purposes only through the VA with PTSD, the Board did not find his service records or his post-service diagnosis sufficiently mitigating for the applicant’s misconduct as a matter of liberal consideration. The applicant did not provide evidence of post-service achievements or conduct for the Board to consider a clemency determination. Based on a preponderance of evidence, the Board determined that the narrative reason and character of service the applicant received upon separation was not in error or unjust.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

X 

CHAIRPERSON

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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.
  - a. 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 (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
3. 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 ensure 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.

4. 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 (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

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 Discharge Review Boards and Boards for Correction of Military/Naval Records (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//