

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240003916

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. 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) (2)
- self-authored letters (3)
- Veterans Affairs (VA) documents
- Letter of Appreciation with miscellaneous in-service personnel documents

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 AR20220002538 on 28 October 2022.

2. In a new argument the applicant states the incident involved other servicemen who played a prank on him which resulted in a bomblet falling from the ceiling which exploded on him. No one else was hurt, yet he was blamed for the incident. The military report does not mention that he almost died. Similar pranks were played on him such as tying him up and throwing him in a dumpster. He suffers from post-traumatic stress disorder (PTSD) and other physical disabilities from the explosion and the harassment. As he gets older, the disabilities and injuries have become much worse. He has been a law abiding citizen, a father, husband, and mentor since leaving the Army. He is proud to have served his country, he wanted to make a career out of it.

3. On 27 March 1984, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 13B (Cannon Crewman). The highest grade he attained was E-4.

4. A DD Form 261 (Report of Investigation – Line of Duty and Misconduct Status) dated 1 August 1986, shows in the Remarks the applicant's injuries were sustained from the explosion of a cluster bomb unit (CBU) on 11 July 1986. The applicant found the CBU

and stored it in his room. While attempting to repair his air conditioner, he knocked the CBU off the ceiling tile and it fell to the floor resulting in an explosion. He suffered multiple fragmentation wounds to his face, chest, and legs. The applicant's actions were found not to be in the line of duty – due to his own misconduct.

5. Court-martial charges were preferred against the applicant on 15 August 1986, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of stealing a CBU, between on or about 23-27 June 1986; one specification of damaging a building by explosion, on or about 27 June 1986; one specification of disobeying a lawful general regulation, on or about 27 June 1986; and one specification of wrongfully possessing a CBU and other munitions, between on or about 23-27 June 1986.

6. The applicant's record is void of a complete memorandum with his endorsement that he voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service; or that he 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; and the procedures and rights that were available to him.

7. On 16 September 1986, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge. The commander noted the applicant's alleged offenses of larceny of government property, wrongful possession of explosives, and damage to government property, indicate that he had no potential for further dutiful service.

8. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 26 September 1986, and directed his reduction to the lowest enlisted grade with issuance of an UOTHC discharge certificate.

9. The applicant was discharged on 21 October 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reenlistment Code 3. He completed 2 years, 6 months, and 25 days of net active service this period.

10. The applicant provides:

a. VA documents that show he was granted service connection for treatment purposes only for various injuries and illnesses, including PTSD. However, he was not eligible for any VA benefits due to his dishonorable period of military service.

b. A Letter of Appreciation from his commander, thanking him for enthusiasm, and performance over a 16-month period.

11. The applicant petitioned the Army Discharge Review Board requesting upgrade of his UOTHC discharge. On 28 May 1993, the Board voted to deny relief and determined his discharge was both proper and equitable.

12. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 28 October 2022, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

13. In the processing of this case, a search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no records pertaining to the applicant.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He contends PTSD is related to his request for an upgrade. He also indicated on his application that sexual harassment/assault was also related to his request. However, the applicant described harassment from other service members, not sexual harassment or assault during his active service. 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 Regular Army on 27 March 1984; 2) On 1 August 1986, a Line of Duty Investigation and Misconduct Status showed the applicant's injuries were sustained from the explosion of a cluster bomb unit (CBU) on 11 July 1986 in his room. The applicant's actions were found not to be in the line of duty – due to his own misconduct; 3) Court-martial charges were preferred against the applicant on 15 August 1986, for one specification of stealing a CBU; one specification of damaging a building by explosion; one specification of disobeying a lawful general regulation; and one specification of wrongfully possessing a

CBU and other munitions; 4) The applicant was discharged on 21 October 1986, Chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA medical documentation provided by the applicant were also examined.

c. The applicant contends PTSD is related to his request for an upgrade. He also indicated on his application that sexual harassment/assault was also related to his request. However, the applicant described harassment from other service members, not sexual harassment or assault, during his active service. The applicant reported experiencing harassment and an incident of a "prank" which resulted in an explosion in his room and his discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD for treatment purposes by the VA since 2022, but there is insufficient evidence that he has engaged in behavioral health treatment at the VA.

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 he experienced PTSD as a result of harassment and an incident involving an explosion in his room. He was diagnosed with service-connected PTSD in 2022 by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD as a result of harassment and an incident involving an explosion in his room, while on active service. He was diagnosed with service-connected PTSD in 2022 by the VA.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was diagnosed with service-connected PTSD in 2022. The applicant attributes this condition to harassment and his experience with an explosion in his room. However, there is no nexus between the applicant's report of harassment and resultant diagnosis of PTSD and his misconduct of stealing and possessing munitions and damaging a building by explosions in that: 1) these types of

misconduct are not a part of the natural history or sequelae of the applicant's reported harassment and resultant diagnosed PTSD; 2) the applicant's reported harassment and resultant diagnosed PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated 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 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 petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted, the applicant's record is absent evidence he reported or was diagnosed with a mental health condition while on active service.
2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of larceny of government property and wrongful possession of explosives. The Board noted the applicant provided no post service achievements or character letters of support for the Board to make a clemency determination. 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 honorable. Therefore, the Board denied relief.
- 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:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220002538 on 28 October 2022.

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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 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.

2. 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.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 10 provided that a member who had 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 in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval 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.

5. 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, 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 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.

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.

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//