

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240004037

APPLICANT REQUESTS: in effect, reconsideration of his previous request to upgrade of his under other than honorable conditions character of service to honorable or general under honorable conditions.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu of a DD Form 149 (Application for Correction of Military Record)
- Continuation Statements
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20110016593 on 14 February 2012.
2. The applicant states he had many problems that he has sought to improve. He never broke any military laws. He requests forgiveness and empathy. He has other [pending] applications requesting help, based on his basic and advanced individual training (AIT) location. He completed basic and AIT at Fort McClellan Alabama, which is now closed due to radioactive toxins being found in the area. He believes this may have contributed to his adverse behavior. He will be undergoing medical examinations to determine whether this factor could have contributed to his situation at the time of discharge.
3. He provide any additional supporting evidence; however, he alleges his characterization of service should be upgraded because radioactive toxins at Fort McClellan Alabama, may have affected his mental and physical health, and well-being. His decisions and actions after being stationed at Fort McClellan, AL, were 100% different than those he made prior this assignment. He has sought many means of improving his life, sought to keep meaningful employment, went to AA in 2020, and he has stayed away from alcohol and drugs. He has also grown in wisdom and experience in the past 35 years.

4. The applicant served as an enlisted member of the United States Navy prior to his enlistment in the Regular Army on 20 January 1988. He enlisted in the rank/grade of private (PV1)/E-1. He attended one station unit training (OSUT) at Fort McClellan, AL, from 28 January to 24 May 1988. He was awarded military occupational specialty (MOS) 95B (Military Police). The highest rank/pay grade he achieved was private/E-2.

5. On 15 June 1988, he was assigned to 92nd Military Police Company, Baumholder Germany with duties in his MOS.

6. On 2 July 1988, he departed his unit in an absent without leave (AWOL) status and on 31 July 1988, he was dropped from Army rolls and was carried in a deserter status. On 8 March 1989, he was apprehended by civilian authorities in McComb, MS, and he was returned to military control at the Special Processing Company, Fort Knox, KY, on the same date.

7. On 29 March 1989, court-martial charges were preferred against the applicant for one specification of being AWOL from 2 July 1988 to 8 March 1989.

8. On 29 March 1989, 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 Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving this legal counsel and without coercion, he voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations — Enlisted Personnel), chapter 10, for the good of the service - in lieu of trial by court-martial.

9. On 29 March 1989, he requested discharge, he acknowledged he understood that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense, that also authorized the imposition of a bad conduct or a dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, that he could be ineligible for many or all benefits administered by the Veterans Administration [currently the Department of Veterans Affairs], and that he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

10. On 30 March 1989, he signed a statement admitting he was AWOL for administrative purposes after having been advised by counsel that the government had not yet received the necessary documentation or records necessary to obtain a trial by court-martial. He was also advised that counsel could not fully advise him without these records. He waived all defenses that might have been available to him if his counsel were permitted to review the documents. He knowingly, willingly, and in writing voluntarily declared he was AWOL from 2 July 1988 to 8 March 1989 [249 days]. He

made this admission for administrative purposes for processing out of the Army. He acknowledged that he was aware he might receive an under other than honorable conditions discharge, he understood and had been counseled about all legal and social ramifications of such a discharge.

11. On 30 March 1989, the applicant was placed on excess leave pending the disposition of his voluntary request for discharge.

12. On 13 April 1989, the separation authority approved his request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service, in lieu of trial by court-martial, with an under other than honorable conditions discharge and reduction to private (PV1)/E-1.

13. Accordingly, on 30 May 1989, he was discharged in pay grade E-1. The DD Form 214 he was issued shows he completed 8 months, and 5 days of net active service this period. His awards are listed as the Army Service Ribbon, Marksman Marksmanship Qualification Badge (M-16) Rifle, Hand Grenade, 45 Caliber Pistol, and "M9MM" Pistol. His DD Form 214 also shows in:

- Character of Service, "Under Other Than Honorable Conditions"
- Separation Authority "AR 635-200, Chapter 10"
- Narrative Reason for Separation, "For the Good of the Service In-Lieu of Court-Martial"
- Dates of Time Lost During This Period, "880702-890307"
- Separation code "KFS"
- Reentry code "3B 3C 3"

14. The ABCMR previously considered and denied his request for an upgrade of his characterization in ABCMR Docket Number AR20110016593, on 14 February 2012.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his under other than honorable conditions character of service to honorable or general under honorable conditions.

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:

- Applicant served as an enlisted member of the United States Navy prior to his enlistment in the Regular Army on 20 January 1988.
- He attended one station unit training (OSUT) at Fort McClellan, AL, from 28 January to 24 May 1988.

- On 15 June 1988, he was assigned to 92nd Military Police Company, Baumholder Germany with duties in his MOS.
- On 2 July 1988, he departed his unit in an absent without leave (AWOL) status and on 31 July 1988, he was dropped from Army rolls and was carried in a deserter status.
- On 8 March 1989, he was apprehended by civilian authorities in McComb, MS, and he was returned to military control at the Special Processing Company, Fort Knox, KY, on the same date.
- On 29 March 1989, court-martial charges were preferred against the applicant for one specification of being AWOL from 2 July 1988 to 8 March 1989.
- On 30 March 1989, he signed a statement admitting he was AWOL for administrative purposes after having been advised by counsel that the government had not yet received the necessary documentation or records necessary to obtain a trial by court-martial. He was also advised that counsel could not fully advise him without these records. He waived all defenses that might have been available to him if his counsel were permitted to review the documents. He knowingly, willingly, and in writing voluntarily declared he was AWOL from 2 July 1988 to 8 March 1989 [249 days].
- On 30 May 1989, the applicant was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he was discharge under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service — in lieu of trial by court-martial. He was assigned separation code KFS with reentry code 3, 3B, 3C.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he had many problems that he has sought to improve. He never broke any military laws. He requests forgiveness and empathy. He has other [pending] applications requesting help, based on his basic and advanced individual training (AIT) location. He completed basic and AIT at Fort McClellan Alabama, which is now closed due to radioactive toxins being found in the area. He believes this may have contributed to his adverse behavior. He will be undergoing medical examinations to determine whether this factor could have contributed to his situation at the time of discharge. He alleges his characterization of service should be upgraded because radioactive toxins at Fort McClellan Alabama, may have affected his mental and physical health, and well-being. His decisions and actions after being stationed at Fort McClellan, AL, were 100% different than those he made prior to this assignment. He has sought many means of improving his life, sought to keep meaningful employment, went to AA in 2020, and he has stayed away from alcohol and drugs. He has also grown in wisdom and experience in the past 35 years.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy mental health documentation was submitted for review related to the applicant's time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA for any behavioral health condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends he was stationed in an area that was later found to have radioactive toxins, he believes this impacted his overall well-being and decision-making.

(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 or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant did not select any condition as related to his request, however, he alleges radioactive toxins at Fort McClellan Alabama, may have affected his mental and physical health, and well-being. However, 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. Overall, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of mental health issues on his application 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 petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends he was stationed in an area that was later found to have radioactive toxins, he believes this impacted his overall well-being and decision-making.

(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 or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant did not select any condition as related to his request, however, he alleges radioactive toxins at Fort McClellan Alabama, may have affected his mental and physical health, and well-being. However, 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. Overall, he did not provide any medical documentation substantiating any BH diagnosis.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant did not provide any documentation of post-service achievements, community contributions, or character references that would support a clemency determination. The Board acknowledged the applicant completed initial training and was awarded MOS 95B (Military Police). However, his record reflects a significant period of misconduct, including an unauthorized absence (AWOL) from 2 July 1988 to 8 March 1989, totaling 249 days. He was subsequently apprehended by civilian authorities and returned to military control. In lieu of trial by court-martial, the

applicant voluntarily requested discharge under the provisions of AR 635-200, Chapter 10, for the good of the service. The Board noted, given the severity and duration of the misconduct, there is no basis to warrant an upgrade of the applicant's discharge characterization. Therefore, the Board found reversal of the previous determination is without merit and relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 AR20110016593 on 14 February 2012.

X //SIGNED//

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 635-200 (Personnel Separations — Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

3. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

4. 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, 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.

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.

5. Section 1556 of Title 10, United States 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//