

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240004244

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to general under honorable conditions
- restoration of his rank

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

DD Form 149 (Application for Correction of Military Record)

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, in effect:

a. At the age of 22, he was naive and under extreme distress from the racial harassment he had experienced from boot camp up to his final duty station at Fort Hood. he was stationed at Fort McClellan, AL, where he was exposed to radioactive compounds, chemical agents, and airborne polychlorinated biphenyl, which led to the post's closure or deeming it toxic in 1999.

b. Although he was born and raised in the U.S., his chain of command at different duty stations referred to him as an illegal seeking a green card or called him a "wetback." He was told many times not to file a complaint because it would ruin someone's career. Questioned about his residency due to his ethnic background, he had no one to advocate on his behalf.

c. He spent two years in Korea picking up bodies and digging ditches, which he was told was what "wetbacks" do. After 23 years of living with post-traumatic stress disorder (PTSD), he can still vividly recall those images. Now at 44, educated and pursuing higher education, he requests to be heard.

After 23 years of PTSD, he can still see those haunting images. He loves and continues to love his country, which is why he is asking to be heard. He can no longer keep these thoughts and images unspoken.

3. The applicant did not provide documentary evidence in support of his claim of PTSD.

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

a. He enlisted in the Regular Army on 12 June 1998.

b. DA Forms 4187 (Personnel Action) reflect his duty status changed as follows:

- From Absent Without Leave (AWOL) to Dropped From Rolls (DFR), effective 17 March 2001
- From DFR to Present for Duty/Returned to Military Control, effective 2 April 2001

c. DD Form 616 (Report of Return of Absentee) reflects the applicant surrendered to Fort Sill, Oklahoma military authorities on 2 April 2001 and was later transferred to the Commander, Personnel Confinement Facility.

d. DD Form 458 (Charge Sheet), dated 4 April 2001, court-martial charges were preferred against the applicant for one specification of being AWOL from 15 February 2001 to 2 April 2001.

e. On 6 April 2001, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding 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 an undesirable discharge
- he 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws

- he was advised he could submit any statements he desired in his own behalf; he did not submit any statements

f. The separation authority approved the applicant's request for discharge on 3 January 2002, under the provisions of AR 635-200, chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and discharged under other than honorable conditions.

g. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 25 January 2002, under the provisions of AR 635-200, chapter 10. He completed 3 years, 5 months, and 25 days of active service this period and he had lost time from 15 February 2001 to 1 April 2001. The DD Form 214 also shows in:

- Items 4a (Grade, Rate or rank) and 4b (Pay Grade) show PV1/E-1
- Item 12h (Effective Date of Pay Grade) – 3 January 2001
- Item 26 (Separation Code) - KFS
- Item 27 (Reentry Code) - 4
- Item 28 (Narrative Reason for Separation) - In Lieu of Trial by Court-Martial

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15 year statute of limitations.

6. Army Regulation 635-200 states, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge 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.

7. 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.

8. 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 under honorable conditions (general). 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 12 June 1998.
- A charge sheet dated 4 April 2001 showed court-martial charges were preferred against the applicant for one specification of being AWOL from 15 February 2001 to 2 April 2001. He requested discharge in lieu of court-martial.
- The applicant was discharged on 25 January 2002 and completed 3 years, 5 months, and 25 days of active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was subjected to racial harassment, and while stationed in Korea, he was exposed to dead bodies, which has resulted in PTSD. The application was void of any medical or mental health records. 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 no history of mental health related treatment or diagnoses.

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. The application did not include any mental health records and no records were available through JLV.

(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 any mental health condition(s) while on active service. The applicant asserts exposure to traumatic images and experiences, but there is insufficient evidence, beyond self-report, that he was experiencing a mental health condition, including PTSD, while on active service. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events.

Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service.

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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy AWOL offense leading to the applicant’s separation and the following findings outlined in the medical review:

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

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No.

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

:XXX :XXX :XXX 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.

//SIGNED//
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 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 of that regulation provides, in pertinent part, 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.

3. 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.

4. 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.

5. 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.

6. 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//