

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240004857

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge to honorable.

PPLICANT'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)
- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 December 1995
- Department of Veterans Affairs (VA) Letter, 10 September 2020
- Medications List, 25 August 2022
- Consult Requests, 25 August 2022
- Progress Notes, 25 August 2022

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 AR20110022711 on 24 May 2012.

2. The applicant states, in effect, prior to his discharge he was having suicidal thoughts. At times, he still has suicidal thoughts. He was hospitalized and treated at Schofield Barracks military hospital in Hawaii before going missing. He lost it all because he could not stop thinking about Haiti and the conditions over there. He was sick and did not realize what he was doing. Had he been in his right mind he would have never left his post with only one month left. He did his job until his illness. He is currently on medication that kind of helps him, and he attends counseling regularly.

3. The applicant provides the following:

a. A letter from the VA, dated 10 September 2020, which states the VA decided that the applicant's military service for the period of 27 January 1993 to 1 December 1995 was honorable for VA purposes.

b. A medications list, printed on 25 August 2022, which shows he was prescribed medication for depression, sleeping, pain and inflammation, thyroid replacement, a vitamin supplement, and allergies.

c. Consult requests which shows the applicant has a service-connected disability of 50 percent for anxiety disorder.

d. Progress notes, printed on 25 August 2022, which show he had a telephone visit on an unspecified date. It states the applicant restarted bupropion for depression. He took the medication nearly everyday for a few weeks and felt more relaxed and calmer. The medical provider encouraged him to take it daily for steady state. The applicant stated during the telephone visit that he was using trazodone and got about 5-6 hours of uninterrupted sleep. They discussed potential for tolerance and that he should increase to a whole tablet when that happened. The applicant stated that he had been doing some counseling. The examiner noted that the applicant's behavior was mildly irritated.

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

a. He enlisted in the Regular Army on 27 January 1993. The highest rank he held was private first class, (PFC/E-3).

b. His duty status changed on the following dates:

- Present for Duty (PDY) to Absent without Leave (AWOL) – 31 July 1995
- AWOL to Dropped from Rolls (DFR) – 29 August 1995
- DFR to attached/return to military control – 5 September 1995

c. He surrendered to military authorities at the Naval Support Activity, New Orleans, LA on 5 September 1995 and was assigned to Alpha Battery, Personnel and Support Battalion, Fort Sill, OK.

d. A memorandum dated 7 September 1995, shows the applicant elected not to undergo a medical examination for separation from active duty.

e. Court-martial charges were preferred against the applicant on 8 September 1995. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 3 August 1995 to on or about 5 September 1995.

f. On 11 September 1995, after consulting with legal counsel, the applicant voluntarily requested discharge in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniformed Code of

Military Justice (UCMJ), authorized the imposition of a bad conduct 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.
- 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 the imposition of a bad conduct or dishonorable discharge.
- he stated that under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service.
- he further understood that he may be discharged under conditions which were other than honorable and furnished an under other than honorable discharge.
- 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 Veteran's Administration
- he could be deprived of his rights and benefits as a veteran under both Federal and State law.
- he could encounter substantial prejudice in civilian life because of an under other than honorable discharge.
- he understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency or the ABCMR.
- he was advised he could submit any statements in his own behalf, and he elected not to do so.

g. A DD Form 458, dated 18 October 1995, shows court-martial charges were preferred against him for being AWOL from on or about 31 July 1995 to on or about 31 August 1995.

h. On 26 October 1995, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The commander noted that the applicant had become disillusioned with the military and retention was not in the best interest of the Army.

i. The separation authority approved the recommended discharge on 6 November 1995, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

j. The applicant was discharged on 1 December 1995. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the lowest enlisted grade, and his service was characterized as under other than honorable conditions (Separation Code KFS). He completed 2 years, 10 months, and 5 days of net active service during the covered period. Item 18 (Remarks) shows he was separated from service on temporary records and Soldier's affidavit.

5. The applicant's DA Form 2-1 (Personnel Qualification Record) indicates he was awarded or authorized awards that are not shown on his DD Form 214 and will be listed in the administrative notes.

6. On 24 May 2012 and in ABCMR Docket Number AR20110022711, the ABCMR determined that the evidence presented did not demonstrate the existence or a probable error or injustice. Therefore, the Board determined that the overall merits of his case were insufficient as a basis for correction of his records.

7. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within that board's 15-year statute of limitations.

8. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that he experienced mental health issues following his service to Haiti and that he had been psychiatrically hospitalized prior to going absent without leave (AWOL). The applicant previously petitioned the Board for relief and a summary of the proceedings are summarized in Docket Number AR20110022711 on 24 May 2012. 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 (RA) on 27 January 1993, 2) court-martial charges were preferred against the applicant on 18 October 1995 with one specification of being AWOL from 31 July 1995 to 31 August 1995, 3) the applicant was discharged on 01 December 1995 under the provisions of Army Regulation (AR) 635-200, Chapter 10, in lieu of court-martial 4) on 24 May 2012, the ABCMR denied relief, citing that the merits of his case were insufficient as a basis for correction of his records.

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) was 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. The applicant's military service treatment records (STR) available via the Veterans Benefits Management System (VBMS) were reviewed. A Report of Medical Examination for enlistment purposes dated 18 December 1992 documented item number 42, psychiatric, as normal on clinical evaluation. This was consistent with his Report of Medical History wherein he did not endorse any items consistent with a history of any behavioral health-related concerns at the time of enlistment. A hospital discharge Narrative Summary dated 23 May 1995 documented the applicant was psychiatrically hospitalized from 18-22 May 1995 due to suicidal ideation with plan. It was documented that the applicant expressed several stressors contributing to his disposition to include wanting to be discharged to care for his mother who was homeless and addicted to drugs and wanting to assume custody of his son. It was documented that the command was supportive of compassionate reassignment though indicated that the applicant desired discharge and not reassignment. Per the note, the applicant reported experiencing depressed mood, insomnia, decreased appetite, emotional lability, and a 21-pound weight loss over a 3-month period (though noted he had been on a diet), and anhedonia. It was documented that the applicant had a recent onset of alcohol abuse, noting he drank 3-4 beers per week and three coffee cups of brandy per week. There was no history of DUIs or periods of blackouts noted, though it was documented that the applicant was pending UCMJ charges for confronting an off-duty person the night prior and verbally assaulting him and attacking a pay phone in the barracks. It was further documented that the applicant's command was consulted for collateral information and noted that the applicant was a 'good Soldier' until they had gone to Haiti and his dissatisfaction with the military grew from there. The applicant was discharged back to duty with his condition documented as stable and had a follow-up with the Division Mental Health. He was also recommended for Level II treatment and a consult for the ADAPCP was placed. The applicant's diagnosis at the time of discharge was Adjustment Disorder with Depressed Mood and Cluster B Traits. There were no additional in-service behavioral health records available for review.

d. Review of JLV shows the applicant is 50% service-connected for Anxiety Disorder. The applicant underwent two BH Compensation and Pension (C&P) evaluations dated 11 November 2021 and 28 May 2024. On 11 November 2021, the applicant was diagnosed with Other Specified Trauma and Stressor Related Disorder. The identified stressor(s) were related to his service in Haiti. Specifically, a when he served on the graveyard detail and was tasked with keeping people out of the graveyard and preventing them from stealing skulls and bones. He also described an incident of a jail break wherein they were tasked to contain prisoners and were fired upon. At the time of his second C&P examination, he was diagnosed with PTSD and Major Depressive Episode, Single Episode, Moderate. It was documented that since his last examination

he had received mental health treatment to include counseling and medication management (Bupropion, Prazosin, Seroquel, and Trazodone). He endorsed symptoms of depression, anxiety, suspiciousness, panic attacks, all of which impacted his ability to function. He also endorsed mild memory loss, suicidal ideation, difficulty adapting to stressful situations, disturbances in motivation and mood, and difficulty maintaining work and social relationships. His diagnosis of MDD was determined to be secondary to PTSD. The diagnoses were documented to be associated with his military traumatic experiences, which have worsened over time.

e. A Department of Veterans Affairs letter dated 10 September 2020 documented that his service from 27 January 1993 to 01 December 1995 was considered honorable for VA purposes and that he was entitled to healthcare for any conditions determined to be service-connected. The applicant initiated mental health treatment through the VA on 06 August 2019. It was documented he sought care due long-standing emotional difficulties due to many stressors, to include his military service to Haiti in 1995. The applicant was diagnosed with Depressive Disorder, Possible PTSD and Hypothyroid. The applicant was recommended to continue supportive therapy, start medication (Zoloft and Trazodone), and continue management of thyroid issues with PCM. The applicant engaged in BH care through the VA from the time he first initiated services in 2019 through present day. The applicant underwent a PTSD intake on 23 July 2024 and was referred for individual evidence-based psychotherapy (prolonged exposure).

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant had a condition or experience in-service that mitigates his misconduct. The applicant was psychiatrically hospitalized for a period of 4 days due to suicidal ideation and was diagnosed with Adjustment Disorder with Depressed Mood. It was also documented that the applicant's commander described him as a 'good Soldier' prior to their tour to Haiti and noticed a change following their return. Subsequent to his discharge from the military, the applicant has been diagnosed with PTSD and Major Depressive Disorder through the VA and the provider noted his conditions were the result of his military experiences, notably the trauma and stressors he experienced in Haiti. The applicant is 50% service-connected for Anxiety Disorder through the VA.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service. He has also been diagnosed with PTSD and Major Depressive Disorder through the VA and is 50% service-connected for Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service. He

has also been diagnosed with PTSD and Major Depressive Disorder through the VA and is 50% service-connected for Anxiety Disorder.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant was diagnosed with Adjustment Disorder with Depressed Mood in-service and was psychiatrically hospitalized for a period of 4 days prior to going AWOL. He has been diagnosed with PTSD and Major Depressive Disorder through the VA and is 50% service-connected for Anxiety Disorder. The evaluating VA provider documented that the applicant's diagnosis of Major Depressive Disorder is secondary to his diagnosis of PTSD, which was attributed to his service in Haiti. There is clear evidence in the applicant's record that he endorsed experiencing depressive symptoms while in-service and that his commander noticed a change in behavior following their tour to Haiti, consistent with the applicant's self-statement. As there is an association between avoidance behaviors and going AWOL, there is a nexus between the applicant's diagnosis of PTSD and the circumstances that led to his misconduct. As such, BH mitigation is fully supported.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 31 July 1995 to 31 August 1995, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant's contention of post-traumatic stress disorder. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence that the applicant had a condition or experience in-service that mitigates his misconduct. Based on the applicant's contention, the Board granted relief.

2. Prior to closing the discussion, the Board reviewed and concurred with the analyst of record's administrative note below to add additional awards to the applicant's DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20110022711 on 24 May 2012. 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 1 December 1995 to show an honorable characterization of service.

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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.

ADMINISTRATIVE NOTE(S): A review of the applicant's records show he is authorized awards not listed on his DD Form 214 for the period ending 1 December 1995. As a result, his DD Form 214 should be amended in item 13 (Awards) to show award of the:

- Army Service Ribbon
- National Defense Service Medal

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which 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 Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) and the SPD/Reentry code cross reference table provide the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. In effect at the time, the regulation prescribed shows:

Soldiers separated under the provisions of Army Regulation 635-200, chapter 10, with a narrative reason of in lieu of trial by court-martial would receive the separation code "KFS."

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 Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

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//