

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240005329

APPLICANT REQUESTS: in effect,

- Upgrade of his under other than honorable conditions discharge to honorable
- Change in the narrative reason for separation from for the good of the service – in lieu of court martial to something else
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form (SF) 600 (Chronological Record of Medical Care)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 11 September 1987
- DD Form 214, 15 November 1991

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 humbly requests that his character of service and type of separation be reconsidered and upgraded. He wants his name to be remembered as having integrity, respecting the constitution, for the sacrifices and hardships endured while serving the people of the United States of America, and to not be dishonored and forgotten. Based on misdiagnosed or undiagnosed mental conditions and stress disorder and improper care given during and after serving in Operation Desert Storm. His request is based on distinctions of his military record until time in Desert Storm and precipitous decline thereafter. The delay in due to part of maturation and self-examination.

3. The applicant enlisted in the U.S. Army Reserve on 30 December 1985. He entered a period of active-duty training (ADT) on 2 July 1987. He was released from active duty on 11 September 1987, after completion of ADT. He held military occupational specialty (MOS) 51B (Carpentry and Masonry Specialist).

4. He enlisted in the Regular Army on 11 March 1988.

5. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he served in Germany from 1 May 1988 until 28 April 1990. He served in Saudi Arabia from 20 October 1990 until 14 April 1991.

6. His record is void of a DD Form 458 (Charge Sheet). This form would have indicated the court martial charge(s) and specification(s) which were preferred. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review. However, his record contains:

a. Chain of command recommendations, 7 November 1991, wherein his immediate commander recommended approval with issuance of an Other Than Honorable Discharge Certificate based on flagrant and repeated violations of failure to obey orders by a superior officer and noncommissioned officers and assaulting another soldier. After the soldier was instructed to report to the charge of quarters, he fled the area and remained absent until the following day. The intermediate commander recommended the same based on the assessment by the company commander.

b. Waiver of rights, 13 November 1991, showing the applicant voluntarily waived any right to a physical examination in conjunction with his request for discharge for the good of the service. Defense counsel consulted with him on 8 November 1991 at which time he personally made the choice to waive the physical exam.

c. The separation authority approved his request for discharge and that he be discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He directed he be issued an Other Than Honorable Discharge Certificate and that he be reduced to the grade of private/E-1.

7. He was discharged on 15 November 1991 under other than honorable conditions. His DD Form 214 shows he completed 3 years, 8 months, and 5 days net active service this period. He was awarded or authorized: Army Service Ribbon, National Defense Service Medal, Overseas Service Ribbon, Parachutist Badge, Army Achievement Medal, Southwest Asia Service Medal with 2 bronze service stars. It also shows:

- Item 25 (Separation Authority): AR 635-200, chapter 10
- Item 26 (Separation Code): KFS
- Item 27 (Reentry Code): RE-3

- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial

8. There is no evidence the applicant applied to the Army Discharge Review Board within the Board's 15-year statute of limitations.

9. The applicant provides SF 600, dated 28 August 1991, showing a referral by a friend, presenting problems of spousal abuse emotional and physical. The impression was situational anxiety and stress due to marital problems. Recommendation was for individual and family counseling and marital counseling.

10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

11. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. 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.

12. 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.

13. 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 honorable and a change in the narrative reason for separation. He contends he experienced an undiagnosed mental health condition, including PTSD, and 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 11 Mar 1988. He served in Germany from 1 May 1988 to 28 Apr 1990 and Saudi Arabia from 20 Oct 1990 to 14 Apr 1991.
- His record is void of a DD Form 458 (Charge Sheet). This form would have indicated the court martial charge(s) and specification(s) which were preferred. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review. However, his record contains: command recommendation for issuance of an UOTHC discharge based on repeated violations of failure to obey orders and assaulting another soldier. Additionally, after being instructed to report to the charge of quarters, he fled the area and remained absent until the following day.
- The applicant was discharged on 15 Nov 1991, and he was credited with 3 years, 8 months and 5 days of net 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 experienced misdiagnosed or undiagnosed mental health conditions, stress disorder (PTSD) and improper caregiving during and after serving in Operation Desert Storm. A DoD medical care note (28 Aug 1991) indicated his presenting problem as being spouse abuse, both physically and emotionally. His mental status noted fair judgment, situational anxiety, and stress as a result of marital difficulties. Individual and family counseling was recommended by the social worker. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA's 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. There was no indication of any service-connected disabilities as well.

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 condition(s) or experience, including PTSD, that mitigates his misconduct. The absence of a charge sheet indicating facts and circumstances surrounding his discharge limits this advisor's ability to produce a viable opinion.

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 undiagnosed mental health condition(s), including PTSD, at the time of the misconduct. DoD records do indicate the presence of situational anxiety and stress because of marital abuse.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health condition(s), including PTSD, while on active service.

(3) Does the condition or experience excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing mental health condition(s) while on active service. A single DoD treatment note did indicate situational anxiety and stress due to marital discord, specifically his claim of physical abuse. However, he provided no records of a mental health diagnosis, and no records were found through JLV. In addition, there are limitations in providing a credible opine since the charge sheet indicating facts and circumstances of applicant's discharge was not available. However, the applicant contends he was experiencing mental health condition(s), including PTSD, 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 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 an offense 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 being undiagnosed with mental health conditions; however, concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience, including PTSD that would mitigate his misconduct. Therefore, the Board denied relief to amend the applicant's narrative reason for separation. The Board found no error or injustice in the designated characterization of service assigned by his commander during separation and denied his request to upgrade his characterization of service.

2. 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
:XX	:XX	:XX	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 //SIGNED//

CHAIRPERSON
Signed by:

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):

1. A review of the applicant's service records is sufficient to substantiate correction of the DD Form 214 ending 11 September 1987, without action by the Board. Therefore, correct Item 24 (Character of Service) from "Entry Level Status" to "Honorable" due to obtaining an MOS of "51B".

2. A review of the applicant's service records shows he is entitled to awards not listed on his DD Form 214. As a result, amend his DD Form 214 ending on 15 November 1991 to show:

- Kuwait Liberation Medal (Kingdom of Saudi Arabia)
- Kuwait Liberation Medal (Government of Kuwait)

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 (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

3. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their

period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Chapter 10 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 a 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. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

4. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons:

- Separation Code KFS applies to in lieu of trial by court-martial under AR 635-200 chapter 10
- Separation Code JFF applies to Secretarial Authority under AR 635-200, paragraph 5-3

5. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. 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 (TBI), 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 sexual assault or sexual harassment was unreported, or 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. The guidance further describes evidence sources and criteria and requires Boards to consider the

conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. 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.

//NOTHING FOLLOWS//