

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240005436

APPLICANT REQUESTS:

- reconsideration of his prior request for upgrade of his under other than honorable conditions discharge to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- personal statement, titled: Protection Under Estoppel
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings Docket Number AR20190010203
- Information paper from the California Department of Social Service (CDSS), titled: CDSS Policy on Equitable Estoppel
- Department of Veterans Affairs (VA) Rating Decision, dated 8 July 2022
- VA Rating Decision, dated 28 November 2023
- VA Rating Decision, dated 19 December 2023
- VA letter of verification for Veteran's preference for Federal civil service employment and a VA summary of benefits letter
- VA Medical Opinion Disability Benefits Questionnaire (DBQ)
- VA Initial Post-Traumatic Stress Disorder (PTSD) DBQ
- My HealtheVet Personal Information Report
- Heritage Christian Center Certificate of Pastoral Ordination
- Colorado Community Center Hope City Church mission statement
- The Potter's House Church of Denver Foundations 101 – New Members Course
- Heritage Christian Center Certificate of Graduation, 12 Step Recovery Course
- The Potter's House Church of Denver Certificate of Ordination
- Heritage Christian Center Certificate of Pastoral Ordination
- Bridges Fellowship International Ordained Minister Certificate
- The Gospel Ministry Certificate of License
- five third-party character reference letters

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190010203 on 17 January 2020.

2. The applicant states:

a. New information has been added to the record which will explain the reason for the behavior that cause his other than honorable discharge. The ABCMR indicated in letter written in April 2020 that he could request reconsideration of the prior decision when there is new evidence or argument that was not considered by the Board when there was a denial of original application. He is asking for reconsideration from honorable members of the Board regarding equity, injustice, or clemency determinations taking under consideration of new evidence and mental disorder and PTSD at the of his military service and the determination by the VA of service connection.

b. He is requesting reconsideration for a discharge upgrade due to PTSD. During his time in the Army, he encountered experiences that have since led to the development of PTSD which symptoms associated with this condition have significantly impacted his ability to fulfill his duties effectively and have taken a toll on his overall well-being. Despite seeking treatment and support, it was increasingly challenging to continue serving in the Army and it still affects his daily life. As outlined in the Department of Defense Instruction 1332.14 (Enlisted Administrative Separations), he believes his circumstances back then and now warrant reconsideration for a discharge upgrade. He is committed to continuing his treatment and rehabilitation to overcome the challenges posed by PTSD and to continue contributing positively to society in a civilian capacity. He has enclosed documentation from healthcare professionals detailing his diagnosis and its origin. Additionally, he has included service records and evaluations that support his request for reconsideration. He is deeply grateful for the opportunities and experiences he gained during his time in the Army, and he remains proud of his service to our great country. H believes that a discharge upgrade is warranted. He is currently 90% service-connected with a 70% rating for PTSD.

3. In a personal statement, titled: Protection Under Estoppel, the applicant further states, (Note: The Merriam-Webster dictionary defines "estoppel" as "a legal bar to alleging or denying a fact because of one's own previous actions or words to the contrary.")

a. Detrimental Reliance: He relied on assurance, policies, or practices of the military regarding fair treatment, medical care protection from harm , which influenced their decisions or actions.

b. Unjust Actions by the Military: The military's failure to fulfill its obligations or adhere to its own policies resulted in harm, such as him receiving a discharge of other than honorable without proper due process or representation.

c. Equitable Considerations: Considering his service, sacrifices, and unique challenges suffering from PTSD and hazing while stationed at Fort Sill, OK, which was ultimately the reason for his violation of the Uniform Code of Military Justice (UCMJ) (absent without leave (AWOL)). This supports the application of estoppel to prevent the military from unfairly benefiting from its own wrongful conduct.

d. Prejudice: He suffered significant prejudice as a result of the military's actions or inaction including long-term psychological trauma, physical injuries, and a life-long struggles with addictions, which could have been mitigated or avoided with proper treatment and support.

e. Public Policy: Upholding principles of fairness, justice, and respect for his rights supports the application of estoppel in this case to prevent injustice and ensure accountability within the United States of America Armed Forces.

4. The applicant enlisted in the Regular Army on 31 August 1984.

5. The applicant departed AWOL on 4 September 1985 and remained AWOL until he was apprehended by civilian authorities on 7 November 1985.

6. On 18 November 1985, court-martial charges were preferred against the applicant based on his AWOL offense.

7. On 19 November 1985, after consulting with legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial, due to the charges preferred against him under the UCMJ which authorized the imposition of a bad conduct or dishonorable discharge.

8. In his request, he acknowledged he was guilty of the charges against him which authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged that:

- he had not been subjected to any coercion whatsoever by any person with respect to his request for discharge
- he was advised of the facts which must be established by competent evidence beyond reasonable doubt to sustain a finding of guilty

- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Veterans Administration (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of discharge under other than honorable conditions

9. On 12 November 1985, the applicant acknowledged he had been counseled on the requirements for completion of a medical examination prior to separation. He elected not to undergo a medical examination.

10. On 18 November 1985, after consulting with military defense counsel, the applicant signed a statement acknowledging the following:

a. I (applicant) declare that I have been advised by defense counsel that at the present time the government has not received the necessary documentation and or records with which to obtain a conviction by court-martial. This is not due to any fault of the government but merely to the time required to request and mail the documents and records. Further, I have been advised by my military counsel that he cannot completely advise me without these records. I realize my defense counsel is limited by the few records that are available as to the advice he can give. Nevertheless knowing, all this to be true, I waive all defenses that may have become known had my defense been able to review my records.

b. Knowing all these to be true, I knowingly, willingly, and voluntarily declare that I was AWOL from the U.S. Army from 4 September 1985 to 6 November 1985.

11. On 27 November 1985, the separation authority approved the applicant's request for discharge and directed his reduction to the rank of private/E-1 and his service characterized as under other than honorable conditions. On 23 December 1985, he was discharged accordingly. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, chapter 10, for the good of the service in lieu of trial by court-martial, with his service characterized as under other than honorable conditions.

12. The applicant submitted an application to the Army Discharge Review Board (ADRB), dated 5 September 1988, requesting an upgrade of his discharge to general, under honorable conditions. On 19 April 1989, the ADRB determined he was properly and equitable discharged and denied his request.

13. The applicant provided:

- a. VA rating decisions showing he was granted service-connected disability compensation for various conditions that include PTSD.
- b. An information paper, titled: CDSS Policy on Equitable Estoppel. The information paper was provided to the Board for their review and consideration.
- c. Various certificates and third-party character reference letters showing he is an ordained minister and indicating he is a strong man of faith and prayer and active in the church.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his prior request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 31 August 1984, 2) he was absent without leave (AWOL) from 04 September 1985 until apprehended by civil authorities on 07 November 1985, 3) on 18 November 1985, court-martial charges were preferred against the applicant based on his AWOL offense, 4) The applicant was discharged on 23 December 1985 under the provisions of AR 635-200, Chapter 10, For the Good of the Service In Lieu of Trial by Court-Martial, 5) the applicant's previous petition to the ADRB was denied on 19 April 1989 as it was determined that he was properly and equitable discharged and denied his request.

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. In-service medical records included as part of his application were reviewed. A Report of Medical Examination dated 27 February 1984 for the purposes of enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History shows that he did not endorse a history of any BH-related concerns. A medical note dated 26 August 1985 shows that the applicant requested a profile for his arm and noted he had shoulder dislocation for 3 days. It was documented that he had fallen off of his motorcycle and had been seen in the emergency room (ER). A DA Form 2173 (Statement of Medical Examination and Duty Status) dated 24 August 1985 showed that his motorcycle accident and associated injuries were determined to have been incurred in the line of duty.

d. Review of JLV shows the applicant is 100% service-connected through the VA for several conditions, to include 70% for PTSD. The applicant underwent a VA Compensation and Pension (C&) examination on 09 October 2023 and was diagnosed with PTSD. The stressors associated with his diagnosis of PTSD were documented as a motorcycle accident in 1984 [*Advisors note*: this is likely a typo as his in-service medical record shows a shoulder injury due to falling off of his motorcycle in 1985] and a hazing incident. As part of his application, the applicant included a printout of his VA medications, showing several medications for his medical and BH conditions. BH-related medications were noted as Venlafaxine (antidepressant) for depression, anxiety, and PTSD and Hydroxyzine for anxiety.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a potentially mitigating BH condition since being discharged from the military. This Advisor would contend that the applicant's misconduct of AWOL is mitigated by his diagnosis of PTSD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's in-service medical records were void of a BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with PTSD. As there is an association between avoidance behaviors and trauma, there is a nexus between the applicant's misconduct of AWOL and his diagnosis of PTSD. As such, BH mitigation is 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 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. One potential outcome was to grant relief based on the advising opinion that PTSD is a mitigating

condition under liberal consideration. However, upon review of the applicant's request, available military records and medical review, the Board majority considered the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a potentially mitigating BH condition since being discharged from the military. This Advisor would contend that the applicant's misconduct of AWOL is mitigated by his diagnosis of PTSD.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's in-service medical records were void of a BH diagnosis or treatment history. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with PTSD. As there is an association between avoidance behaviors and trauma, there is a nexus between the applicant's misconduct of AWOL and his diagnosis of PTSD. As such, BH mitigation is supported.

3. The Board notwithstanding the medical opinion from the Agency Medical Advisor indicating that the applicant has been diagnosed with a potentially mitigating behavioral health condition—post-traumatic stress disorder (PTSD) since his discharge. The Board acknowledged, the advisor contentions that the applicant's misconduct of AWOL may be mitigated by this diagnosis, the Board however, found that the evidence does not support relief in this case. The applicant was apprehended for an extended AWOL period of over two months. At the time of discharge, there was no indication of behavioral health concerns, and the applicant did not raise any such issues during the separation process.

4. Furthermore, the Board recognized the applicant's post-service achievements, including his ordination as a minister and five-character reference letters attesting to his personal growth and contributions to his community. However, these accomplishments, while commendable, do not outweigh the severity of the misconduct or demonstrate an error or injustice in the original discharge proceedings. The Board agreed that the applicant was properly and equitably discharged under the standards in effect at the time, and that clemency is not warranted. Therefore, relief is denied.

5. 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>	
:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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 AR20190010203 on 17 January 2020.

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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides that a member who has committed an offense 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. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of VA benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. Although a general discharge is authorized, an under other than honorable conditions discharge is normally considered appropriate.

b. 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.

c. 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.

2. 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 Service Discharge Review Boards and Service Boards for Correction of Military Records when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

4. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//