

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240005554

APPLICANT REQUESTS: an upgrade of his under other than honorable (OTH) conditions discharge to under honorable conditions (general). Also, a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-4138 (Statement in Support of Claim)

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 VA Form 21-4138:

a. During Operation Desert Storm he was assigned to 1st Calvary Division. His military occupational specialty was 45K Tank turret technician assigned to work all of the armored vehicles in his command. They were based in Saudi Arabia and were part of the initial armored assault into Iraq. During his tour of duty, he experienced a variety of combat stress, unbeknownst to himself at the time this was post-traumatic stress disorder. His job experience then was that he had to repair the tank turrets just a few yards behind the combat line of advance, all the vehicles were still fully loaded with live ammunition. Speed was essential to get these vehicles back into full combat fighting status. This created a high level of stress and fear. He traveled at night in blackout conditions, following the tanks wherever they went. He witnessed the removal of deceased Soldiers in some of those vehicles. As they traveled further into Iraq, he passed by miles of destroyed and burned cars, buses, with the dead still in them. The sight, sounds, and the smell is something he will never forget.

b. Upon his return to Fort Hood, he had a difficult time adjusting to garrison life. Being around people or crowds became an increasing problem, anger along with a heightened state of awareness be an issue. He did not know where to seek help. He could only find relief from alcohol or other substance abuse.

c. He knows this was wrong and may not be an acceptable excuse, counseling and other mental health care really was not available back then. Since his time in the Army, he has been employed for the past 32 years. He currently works for Leidos with Homeland Security and Customs and Border Protection as an industrial X-ray scanner technician. These machines scan a variety of shipping containers coming into our port facilities. He also repairs the X-ray equipment used by Transportation Security Administration at our local airports. Please review his file and application for discharge upgrade.

3. The applicant enlisted in the Regular Army on 1 August 1986.

4. His first duty station was Germany from 28 March 1987 – 23 March 1990.

5. On 10 May 1988, he extended his enlistment for 8 months to meet time in service requirement for approved command sponsorship.

6. He reenlisted on 24 August 1989 for a period of 4 years for station of choice to Fort Hood, TX.

7. On 7 May 1990, he was stationed at Fort Hood, TX assigned to Headquarters and Headquarters Company, 15th Support Battalion.

8. On 10 October 1991, his commander recommended he be barred from reenlistment in the United States Army for the reason: he had been on the overweight program since 25 May 1991, and had not made progress.

a. On 15 October 1991, the applicant acknowledged he had been furnished a copy of his commander's recommendation to bar him from further reenlistments and he had been counseled and advised of the basis for this action. He did not submit matters on his own behalf.

b. The bar certificate was approved on 17 October 1991. He was counseled on 21 October 1991, on his right to appeal the imposition of the Bar to Reenlistment. He elected not to appeal.

9. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 11 December 1991, for the charges of wrongful use, possession, etc. of a controlled substance and its specifications of:

- between 15 October 1991 and 15 November 1991, wrongfully use marijuana, a schedule I controlled substance detected by biochemical testing of a urine sample submitted on 15 November 1991
- between 31 October 1991 and 15 November 1991, wrongfully use cocaine, a schedule II controlled substance detected by biochemical testing of a urine sample submitted on 15 November 1991

10. On 16 December 1991, he was afforded the opportunity to consult with appointed counsel. He requested discharge for the good of the service. He voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He understood that he may request discharge for the good of the service because of the following charges which have been preferred against him under the Uniform Code of Military Justice, which authorize the imposition of a bad-conduct or dishonorable discharge for two violations of Article 112a, possession and use of a controlled substance. He acknowledged that he understood the elements of the offenses charged and was guilty of an offense against him which authorizes the imposition of a bad-conduct or dishonorable discharge.

- He understood he may be discharged under OTH conditions and furnished an Other Than Honorable Discharge Certificate
- He understood the possible effects of an OTH discharge and as a result he will be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- He also understood that he may expect to encounter substantial prejudice in civilian life because of an OTH discharge

11. His chain of command recommendation was void of his records.

12. On 22 January 1992, the separation authority approved his request for discharge for the good of the service under the provisions of AR 635-200, chapter 10. He directed his discharge be characterized as under other than honorable conditions and reduction to the lowest enlisted grade.

13. On 14 February 1992, he was discharged under other than honorable conditions. His DD Form 214 shows he completed 5 years, 6 months, and 14 days net active service this period. He was awarded or authorized Army Achievement Medal, Good Conduct Medal, National Defense Service Medal, Army Service Ribbon, Overseas Service Medal, Sharpshooter Marksmanship Qualification Badge (Grenade), Marksman Marksmanship Qualification Badge (Rifle). It also shows:

- Item 25: AR 635-200, chapter 10

- Item 26: KFS
- Item 27: 3
- Item 28: For the Good of the Service – In Lieu of Court-Martial

14. The applicant's name does appear on the Gulf War roster from 1 October 1990 – 22 April 1991.

15. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) within the ADRB's 15-years statute of limitations.

16. By regulation, 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.

17. 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.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) and Other Mental Health issues are 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 01 August 1986. He re-enlisted on 24 August 1989 for a period of 4 years, 2) he was stationed in Germany from 28 March 1987 to 23 March 1990. On 07 May 1990, he was stationed at Ft. Hood, TX (now known as Ft. Cavazos) and was assigned to Headquarters and Headquarters Company, 15th Support Battalion, 3) The applicant's name does appear on the Gulf War roster from 1 October 1990 to 22

April 1991, 4) On 10 October 1991, his commander recommended a bar to reenlistment due to lack of progress since being enrolled on the overweight program on 25 May 1991. The bar certificate was approved on 17 October 1991, 5) court-martial charges were preferred on 11 December 1991, for wrongful use, possession, etc. of a controlled substance with the following specifications: between 15 October 1991 and 15 November 1991, wrongful use of marijuana, and between 31 October 1991 and 15 November 1991 wrongful use of cocaine, 6) he was discharged on 14 February 1992 under the provisions of Army Regulation (AR) 635-200, Chapter 10, For the Good of the Service-In Lieu of Court-Martial, with a separation code of KFS, and reentry code of '3.'

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. There were no in-service medical records available for review.

d. A review of JLV was void of medical information. Review of JLV shows he is not service-connected through the VA for any conditions.

e. As part of his application, the applicant included his VA Form, 21-4138 (Statement in Support of Claim) dated 13 March 2024 [*Advisor's Note*: there was no BH VA Compensation and Pension (C&P) examination available for review pertaining to his VA claim]. In his statement, the applicant reported that he was assigned to 1st Cavalry Division during Operation Desert Storm as a tank turret technician assigned to work on the armored vehicles in his command. He indicated that they were based in Saudi Arabia and were part of the initial armored assault into Iraq and during his tour of duty experienced combat stress. More specifically, he noted that he had to repair the turrets a few yards behind the combat line of advance which he said created a "high level of stress and fear." He also indicated that he witnessed the removal of deceased Soldiers in some of the vehicles and when they traveled into Iraq they passed by "miles of destroyed and burned cars, buses, with the dead still in them." The applicant further asserted that he will never forget the sounds and smell[s]. Upon his return to Ft. Hood, the applicant noted he had difficulty readjusting, citing difficulty being around people or crowds, anger, and a heightened state of awareness. He asserted he did not know where to seek help and thus sought relief through use of alcohol or other substances.

f. Per the ROP, the applicant's name appeared on the Gulf War roster from 1 October 1990 to 22 April 1991.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient medical evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service or post-military medical records available for review and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. The lack of documentation of PTSD symptoms in the applicant's military records does not necessarily indicate he did not have in-service PTSD. In such cases, the presence of PTSD has to be inferred from behavioral indicators documented in the applicant's record. Such is the case with this applicant. In his VA Statement in Support of Claim, the applicant indicated that he had trouble readjusting following his deployment, specifically citing that he had trouble with crowds, people, hypervigilance, and anger, and turned to alcohol and substances to cope. Review of the applicant's service records shows that he had reenlisted in 1989, one year prior to his deployment, indicative he had successfully completed his first tour of duty, and there is no documentation of misconduct prior to his deployment. Following his return from deployment, the applicant was issued a bar to reenlistment due to failure to make progress while enrolled in the overweight program and had court-martial charges preferred against him for use of marijuana and cocaine. This pattern of performing well followed by changes in behavior, such as self-medicating with substances, is not uncommon in soldiers suffering from PTSD-related symptoms. Given the available information and after applying Liberal Consideration, it is more likely than not that the applicant experienced PTSD-related symptoms following his deployment. As there is an association between self-medicating with substances and avoidance behavior, there is a nexus between his misconduct of substance use and PTSD-related symptoms. As such, BH mitigation is supported.

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. One potential outcome discussed was to grant relief based upon the misconduct 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? Yes.

However, based upon the multiple drug offenses leading to the applicant's separation and the finding outlined in the medical review which found insufficient medical evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct, 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
■	■	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.

2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately

■ [REDACTED]

■ [REDACTED]

[REDACTED]

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 shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19860801 to 19890823."

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 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. 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.

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.

4. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

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//