

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240005739

APPLICANT REQUESTS: reconsideration of his previous request for:

- upgrade of his under other than honorable conditions discharge
- restoration of his rank/pay grade of specialist four (SP4)/E-4
- correction of his duty status to reflect false imprisonment rather than absent without leave (AWOL)
- acknowledgement and compensation for his post-traumatic stress disorder (PTSD) and other mental and physical disabilities
- a personal appearance before the Board

APPLICANT'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)
- Request for reconsideration (24 pages)
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings AR20220012049
- Federal Bureau of Investigations Record
- Response to CMD letter dated 17 February 2023 (6 pages) with previous documents submitted
- Kurta memo
- Hagel memo
- Department of Veterans Affairs (DVA) letter, 16 September 2022
- DVA admin decision, 30 November 2022
- DVA letter, 1 December 2022
- DVA Decision Review Request: Higher-Level Review
- Letter to DVA (3 pages)

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 AR20220012049 on 21 July 2023.

2. The applicant states in his 24-page request for reconsideration it appears that the ABCMR, whether through inadvertence or misapprehension has predicated its decision on false evidence, therefore, given that the evidence used by the ABCMR in its decision-making process is indeed false, automatically makes said decision invalid and devoid of any consequences.

a. The applicant dissects the ROP from his previous case (AR20220012049) asking the Board to explain and provide evidence of what is listed in the ROP. He claims lie, false pretenses, and racism by his company commander. He claims the first sergeant entered his home and removed his initial issue clothing without authority. He also claims his imprisonment was racially motivated. He asks the ABCMR to provide proof of what was written in the ROP on multiple occasions.

b. He claims conspiracy theories related to his discharge and reasons for arrest. He never communicated a threat to AH or AJ nor was there a warrant for his arrest. The FBI record provided does not contain the crimes listed in the ABCMR ROP. These are indisputable fabrications used to support a decision that ought not exist.

c. He claims items 15-20 of the previous ABCMR ROP are an unadulterated fabrication, placed in chronological order in a frivolous attempt not only to justify the ABCMR malicious dismissal of his application but also for the maniacal purpose of protecting the racially motivated criminal acts of his racist commander that placed him in prison for no reason, thereby compounding his PTSD.

d. Therefore, because of ABCMR acknowledgements that said decision was indeed procured through false evidence, automatically makes it incumbent upon ABCMR to introduce remedial measures to correct this wrong.

e. He wants ABCMR to investigate why was he imprisoned. He wants the commander to be brought up on charges for putting him in the jail cell. (The complete 24-page request for consideration is attached in supporting documents for review by the Board at their convenience).

3. The applicant enlisted in the Regular Army on 27 August 1981. He reenlisted for a period of three years on 3 August 1984.

4. His records contains a State of North Carolina, Cumberland County shows the applicant was released on \$400.00 bond on 14 March 1985 and ordered to appear before the Cumberland County District Court on 3 April 1985 for charges of Trespassing and Assault on a female.

5. DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 28 March 1985, for pre-trial confinement.
6. DA Form 4187 shows on 17 April 1985, he escaped from pre-trial confinement and his duty status was changed from CMA to AWOL.
7. On 3 May 1985, a warrant was issued for the applicant's arrest for orally communicating a threat via telephone to A.H. that he was going to kill him.
8. On 10 May 1985, a warrant was issued for the applicant's arrest for orally communicating a threat via telephone to A.D.J. that he was going to kill her and/or her husband.
9. DA Form 4187 shows on 17 May 1985, the applicant's duty status was changed from AWOL to Dropped from Rolls (DFR).
10. The applicant was apprehended by military authorities on 2 July 1985, processed and released to his unit. His duty status was changed from DFR to PDY, and he was held pending trial by court-martial.
11. DA Form 4187 shows on 2 July 1985, the applicant's duty status was changed from DFR to PDY. He was apprehended by military authorities, Fort Bragg, NC.
12. DD Form 367 (Prisoner's Release Order) shows he was released from confinement on 26 July 1985. The reason for release states separation proceedings were being initiated against the applicant. He is to be discharged from the military under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.
13. A State of North Carolina Release Order shows the applicant was released on bond on 26 July 1985 and ordered to appear before the Cumberland County District Court on 12 August 1985 for charges of Communicating Threats and Telephonic Harassment.
14. His records contains a State of North Carolina, Cumberland County shows the applicant was released on \$400.00 bond on 26 July 1985 and ordered to appear before the Cumberland County District Court on 12 August 1985 for pretrial release program off bond on charges of communicating threats and telephonic harassment.
15. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 26 July 1985 for the following violations of the Uniform Code of Military Justice (UCMJ):

- Charge I - Article 92, Specification: on or about 10 January 1985, dereliction in the performance of duties
- Charge II - Article 86, Specification: on or about 12 March 1985, without authority, go from his appointed place of duty
- Charge III - Article 90,
 - Specification 1: on or about 18 March 1985, willfully disobeyed a lawful command from a superior commissioned officer
 - Specification 2: on or about 21 March 1985, willfully disobeyed a lawful command from a superior commissioned officer
- Charge IV - Article 95, Specification: on or about 8 April 1985, while being transported in a Provost Marshal vehicle, escaped from confinement
- Charge V - Article 85, Specification: was AWOL from on or about 8 April 1985, until on or about 2 July 1985

16. On 26 July 1985, after consultation with counsel he voluntarily requested discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200. He understood that he may request discharge for the good of the service because of the charge preferred against him under the UCMJ, which authorizes the imposition of a bad conduct discharge or dishonorable discharge. He also understood:

- He may be discharged under conditions other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate
- He may be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration
- He may be deprived of his rights and benefits as a veteran under both Federal and State law
- He may expect to encounter substantial prejudice in civilian life because of an under other than honorable conditions discharge

17. His chain of command recommended approval of separation under the provisions of AR 635-200, chapter 10, and that his character of service be under other than honorable conditions.

18. On 23 August 1985, the separation authority approved discharge under the provisions of chapter 10, AR 635-200. He directed an under other than honorable conditions discharge be issued, and he be reduced to the lowest enlisted grade.

19. Accordingly, he was discharged on 9 September 1985, under other than honorable conditions under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he completed 3 years, 9 months, and 19 days net active service this period. It also shows:

- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): 3; 3B; 3C

- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court Martial
- Item 29 (Date of Time Lost During this Period): 850328 – 850416 (28 March 1985 – 16 April 1985); 850417 – 850701 (17 April 1985 – 1 July 1985)

20. The ADRB, after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

21. On 1 June 2022, in ABCMR Docket Number AR20220012049, the Board considered his application but determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The Board denied his request.

22. DD Form 215 (Correction of DD Form 214) shows item 18 was corrected to reflect continuous honorable active service: 19810817 – 19840802 (17 August 1981 – 2 August 1984).

23. The applicant provides:

a. A letter from a Public Defender at the Office of the Public Defender, City of Alexandria, Alexandria, VA, dated 17 February 1995, wherein the applicant was informed that their office could not reopen his case from 1987 because his trial attorneys were never employed by their office.

b. A letter from the Medical Records Department of INOVA Alexandria Hospital, Alexandria, VA, dated 14 July 2020, wherein the applicant was informed that the blood type of Ms. EW was B-Negative.

c. Four pages extracted from what appears to be a court transcript that shows a discussion about the blood types of the applicant and Ms. EW. It stated that since the applicant and Ms. EW were both blood type "O," his guilt or innocence could not be confirmed.

d. A letter from a doctor at ForensicDx, Windber, PA, dated 18 March 2021, wherein the applicant is informed that since the Dr. is no longer at the Office of the Chief Medical Examiner, he has no investigatory authority with regard to his case. He acknowledged receiving a page of a court transcript and the INOVA medical record form showing Ms. EW's blood type as B-Negative but advised the applicant that although he was unfamiliar with the particulars of his case, it definitely calls into question the validity of other findings.

e. Kurta and Hagel memoranda in support of his claim.

f. DVA letter, 16 September 2022, stating the VA had received his application for VA benefits received 3 September 2022.

g. DVA admin decision, 30 November 2022 which shows he had honorable service from 17 August 1981 to 16 August 1984 for VA purposes.

h. DVA letter, 1 December 2022, stating in part they decided that his military service for the period of 17 August 1984 to 9 September 1985 is dishonorable for VA purposes.

i. DVA Decision Review Request: Higher-Level Review as he applied for a review of a decision made.

j. Letter to DVA regarding his claim to the VA.

k. FBI record showing:

- 24 January 1983, charges were dismissed for 2d degree burglary and larceny
- 21 March 1985, charge of assault by pointing a gun was dismissed
- 20 August 1986, PCP possession and possession of cannabis
- 11 December 1986, he was charged with fugitive and strong armed rape
- 24 February 1987, he was charged with rape

l. Response to CMD letter dated 17 February 2023 (6 pages) responding to request for PTSD documentation which he never provided. (The complete 6-page letter is available for the Board's review in supporting documents).

24. By regulation, (AR 15-185) the ABCMR is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

25. By regulation, (AR 635-200) states a Chapter 10 discharge is a voluntary request for discharge in-lieu of trial by court-martial. In doing so, the applicant would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

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 with 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 found no error or injustice in the separation proceedings and designated characterization of service. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.
2. Based on the foregoing conclusion by the Board to deny the applicant's request to upgrade his discharge, the Board concluded there was insufficient evidence to support restoring his rank/pay grade to specialist four.
3. The Board considered the applicant's request pertaining to amending his duty status to reflect false imprisonment rather than absent without leave; however, found insufficient evidence to support the applicant's request.
4. The Board noted the applicant's contention of PTSD.
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> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | 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 amendment of the ABCMR decision rendered in Docket Number AR20220012049 on 21 July 2023.

[REDACTED]

X //SIGNED//

[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.

REFERENCES:

1. 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.

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

a. Paragraph 1-28 provides that when a member is to be issued a discharge under other than honorable conditions, the convening authority will direct his immediate reduction to the lowest enlisted grade.

b. 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.

c. 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.

d. 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.

e. 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.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are voluntarily discharged under the provisions of Army Regulation 635-200, for the good of the service – in lieu of court-martial. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "KFS" will be assigned an RE Code of "4." SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200 with a narrative reason of "Secretarial Authority." The Secretary of the Army will determine RE code for separations under Secretarial authority. SPD code may be used when HQDA message or other directive authorizes voluntary separation in an individual case or category of cases.

4. AR 635-5 (Personnel Separations – Separation Documents), prescribes the separation documents that will be furnished each individual who is separated from the Army. Items 4a and 4b of the DD Form 214 list the rank/grade held by the Soldier at the time of separation.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. 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; traumatic brain injury; 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 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 that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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 on the basis of 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//