

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240005884

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 the discharge was not deserved.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 21 November 1983. The highest rank he held was private first class (PFC)/E-3.
 - b. The applicant's duty status changed on the following dates:
 - Present for Duty (PDY) to Absent Without Leave (AWOL) – 23 April 1985
 - AWOL to Dropped from Rolls (DFR) – 23 May 1985
 - DFR to PDY – 12 June 1985
 - c. DA Form 4126-R (Bar to Reenlistment Certificate), dated 24 July 1985, shows the applicant's commander recommended that he be barred from reenlistment. The commander noted the applicant failed to conform to the standards of conduct and discipline outlined for Soldiers in Army Regulation (AR) 600-50 (Standards of Conduct for Department of the Army Personnel). Specifically, he went AWOL in excess of 40 days, failed to maintain room cleanliness/appearance of room and self, and maintained a track record of failing to report. The commander stated that the applicant was not

reliable and would not be deployed given a combat mission. For these reasons, he should not be retained for further service.

d. The applicant was counseled on 1 August 1985 for failing to conform to the standards of conduct and discipline outlined for Soldiers. The applicant was informed that he was pending court-martial action and would be barred from reenlistment.

e. On 28 August 1985, the bar to reenlistment was approved.

f. The applicant was counseled on 29 August 1985. He was officially notified that the bar to reenlistment was approved.

g. Special Court-Martial Order Number 44, issued by Headquarters, 9th Infantry Division (Motorized), Fort Lewis, WA on 4 October 1985, shows the applicant was found guilty (by excepting the words, "he was apprehended") of being AWOL from on or about 23 April 1985 to on or about 12 June 1985. The court sentenced the applicant to reduction to the grade of E-1, forfeiture of \$300.00 pay per month for three months, and to be confined for 100 days.

h. The sentence was approved on 4 October 1985, and would be executed but the execution of the part of the sentence extending to confinement in excess of three months was suspended for six months, at which time, unless the suspension was sooner vacated, the suspended part of the sentence would be remitted without further action.

i. The applicant's service record does not contain the separation packet or the facts and circumstances pertaining to his chapter proceedings.

j. The applicant was discharged on 11 June 1986. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, misconduct – pattern of misconduct, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years, 5 months, and 1 day of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, the Expert Infantry Badge, and the Expert Marksmanship Qualification Badge (M-16).
- Item 26 (Separation Code): JKM
- Item 27 (Reentry Code): RE-3/RE-3B
- Item 29 (Dates of Time Lost During This Period): 23 April 1985 – 11 June 1985

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.
5. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate.
6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.
7. 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 honorable. On his DD Form 149, the applicant indicated that 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 on 21 November 1983, 2) his duty status changed to absent without leave (AWOL) on 23 April 1985. He was dropped from rolls (DFR) on 23 May 1985, and his duty status was changed to Present for Duty (PDY) on 12 June 1985, 3) on 24 July 1985, DA Form 4126-R shows his commander recommended a bar to re-enlistment due to failure to conform to the standards of conduct and discipline, more specifically, due to going AWOL in excess of 40 days, failing to maintain room cleanliness/appearance of room and self, and maintained a track record of failure to report. It was further noted that the applicant was not reliable and would not be deployed given a combat mission and should not be retained for further service. The bar to reenlistment was approved on 28 August 1985, 4) the applicant was counseled on 01 August 1985 for failing to conform to the standards of conduct and discipline outlined for Soldiers. He was informed that he was pending court-martial action and would be barred from reenlistment, 5) Special Court-Martial Orders dated 4 October 1985, shows the applicant was found guilty of being AWOL from on or about 23 April 1985 to on or about 12 June 1985. The sentence was approved on 4 October 1985, 6) The applicant's service record does not contain the separation packet or the facts and circumstances pertaining to his chapter proceedings, 7) the applicant was discharged on 11 June 1986. Per his DD Form 214, he was discharged under the provisions of AR 635-200, paragraph 14-12b, misconduct-pattern of misconduct, with a separation code of JKM and re-entry code of RE-3/RE-3B.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service records. There were no in-service medical records available for review. 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. There were no VA medical records available for review and no documentation that he is service-connected through the VA. It is of note that the applicant's UOTHC discharge renders him ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient 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, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. 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.

(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? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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. Based upon the misconduct involved, 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? No,

as well as the lack of post-service character evidence submitted by the applicant, 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

:XXX :XXX :XXX 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

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

a. 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.

b. 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12b for Misconduct-Pattern of Misconduct would receive a separation code of "JKM."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. 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.

6. 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.

8. 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//