

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240006024

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision letter
- VA Benefits letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 his discharge should be upgraded due to the fact that at the time of his misconduct, he was suffering from undiagnosed post-traumatic stress disorder (PTSD) from witnessing a death in training and immediately being deployed in support of Operation Desert Shield/Storm. His PTSD was untreated during service and influenced behaviors that led to his discharge. The VA has since diagnosed his PTSD, this condition now formally recognized and treated by the VA, significantly influenced his conduct, which was misinterpreted as willful misconduct rather than a symptom of a mental health crisis. Upgrading his discharge would acknowledge these factors, rectify an oversight, and honor his true service record.

3. On 1 June 1990, the applicant enlisted in the Regular Army for a period of 4 years and 17 weeks in the rank/grade of private (PV2)/E-2. Upon completion initial entry training he was assigned to a unit at Fort Bragg, NC. He served in Southwest Asia from 26 November 1990 to 2 April 1991. He was advanced to private first class (PFC)/E-3 on 1 May 1991, the highest rank he held.

4. The applicant's duty status was changed as follows:

- from Present for Duty (PDY) to Absent Without Leave (AWOL) effective 14 August 1991
- from AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 13 September 1991
- from DFR to PDY effective 16 September 1991 when he was apprehended by civil authorities and returned to military control at Fort Dix, NJ

5. On 16 September 1991, the applicant declined the opportunity to undergo a separation medical examination.

6. A Fort Dix Control Facility Form 691 (Personnel Control Facility Interview Sheet) shows during an interview on 16 September 1991, the applicant stated that after going through Operation Desert Storm, he could not handle the thought of any further deployment into a combat environment. He just wanted a normal, stable life. He further stated that he told his section chief that he wanted out of the Army. It was noted that the applicant's commander did not want him returned to his unit.

7. A DD Form 458 (Charge Sheet) shows on 18 September 1991, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 14 August 1991 until on or about 16 September 1991.

8. On 18 September 1991, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. The applicant elected not to submit any statements in his own behalf.

9. On 24 September 1991, the applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

10. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade prior to execution of the discharge. Orders show the applicant was reduced to PV1/E-1 effective 29 October 1991.

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 20 November 1991, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "3." His service was characterized as

UOTHC. He was credited with completing 1 year, 4 months and 17 days of net active service this period. He had time lost from 14 August 1991 to 15 September 1991.

12. The applicant provides the following documents which are available in their entirety for the Board's consideration.

a. A letter from the VA, dated 26 February 2024, wherein the applicant was informed, in part, that his evaluation for PTSD, which was currently rated at 70 percent, was increased to 100 percent effective 29 November 2023

b. A letter from the VA, dated 29 February 2024, wherein the applicant was provided guidance and information he could take now that VA had made a decision about his benefits.

13. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he 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.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends PTSD as related to his request.

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 in the Regular Army on 1 June 1990.
- He served in Southwest Asia from 26 November 1990 to 2 April 1991.
- A DD Form 458 (Charge Sheet) shows on 18 September 1991, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 14 August 1991 until on or about 16 September 1991.
- Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 20 November 1991, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "3." His service

was characterized as UO THC. He was credited with completing 1 year, 4 months and 17 days of net active service this period. He had time lost from 14 August 1991 to 15 September 1991.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, his discharge should be upgraded due to the fact that at the time of his misconduct, he was suffering from undiagnosed post-traumatic stress disorder (PTSD) from witnessing a death in training and immediately being deployed in support of Operation Desert Shield/Storm. His PTSD was untreated during service and influenced behaviors that led to his discharge. The VA has since diagnosed his PTSD, this condition now formally recognized and treated by the VA, significantly influenced his conduct, which was misinterpreted as willful misconduct rather than a symptom of a mental health crisis. Upgrading his discharge would acknowledge these factors, rectify an oversight, and honor his true service record.

d. Due to the period of service no active-duty electronic medical records were available for review and no hardcopy documentation was submitted by the applicant.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to a combat zone and is currently service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to being AWOL from on or about 14 August 1991 until on or about 16 September 1991. The applicant is 100% service-connected for PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL is mitigated by his BH condition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade request, the Board found that partial relief was warranted.

2. The Board carefully considered the applicant’s contentions, his record of service to include deployment, the frequency and nature of his misconduct, his apprehension and return to military control, the charge sheet, his request for discharge in lieu of court-martial, the reason for his separation and the character of service he received. The Board considered the review and conclusions of the medical advising official as well as the applicant’s PTSD diagnosis. The Board found: (1) the applicant asserts the mitigating condition of PTSD; (2) the applicant deployed to a combat zone and is currently service connected for PTSD; (3) the applicant was discharged due to being AWOL and is 100% service-connected for PTSD. Given the association between PTSD and avoidance, the applicant’s misconduct is mitigated by his BH condition. Based on a preponderance of evidence to include his apprehension, the Board majority determined that an upgrade of the applicant’s discharge to an Under Honorable Conditions is warranted as a matter of liberal consideration. One Board member recommended an upgrade to Honorable as a matter of liberal consideration.


BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	XX:	GRANT FULL RELIEF
XX:	XX:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 20 November 1991, to show his character of service as Under Honorable Conditions (General).

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to showing his character of service as Honorable.


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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
 - b. 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. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised Post-Traumatic Stress Disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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; 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

a. 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.

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.

//NOTHING FOLLOWS//