

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240006865

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a personal appearance and/or a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Five Character letters
- Letter- Ochsner Clinic, 23 March 1992
- Court Order – Name Change

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 he is requesting an upgrade of his discharge to honorable. His DD Form 149 shows he selected post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant provides five-character witness statements, that show in part:
 - a. Dr. T____ T____ a licensed clinical social worker, states she has known the applicant since May 2023 for treatment of complex PTSD. She discovered he had an abusive father and attention deficit hyper-disorder (ADHD) during his childhood. While serving his country, he left due to the birth of his daughter and his grand-father's death. The applicant and his chain of command was unaware of the underlying factors that caused him to leave abruptly. The U.S. Army subjected him to circumstances that amplified his PTSD. In addition, in 2006 he was diagnosed with toxic levels of uranium most likely due to his exposure during his service in Kuwait. The applicant and his

spouse have dedicated their life to sharing their story and have spent hours at AA meetings in the homes of veterans to support and offer hope.

b. Dr. A____ states he has known the applicant for 12 years, they met through AA, and the applicant was his sponsor. He obtained a Doctor of Nursing degree; and the applicant was vital in helping him get to this point.

c. Dr. C____ B____ states he met the applicant during inpatient rehabilitation in 2010 and has witnessed the applicant overcome his challenges.

d. Mrs. K____ L____, the applicant's spouse states she went through multiple suicide attempts, overdose and complete breakdowns with her husband. Every day he continues to work on himself and 22 years later and they are more in love than when they met.

e. Ms. T____ D____, his daughter states her father has struggled with trauma, addiction, and mental health issues his entire life. He always has spoke highly of his time in the military. The events surrounding his discharge always weighed heavy on him.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 27 February 1996.

b. A DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant on 25 November 1997 for three specifications of being absent without leave.

- On 2 September 1997, until on or about 3 September 1997
- On 10 September 1997, until on or about 8 October 1997
- On 17 October 1997, until on or about 19 November 1997

c. On 26 November 1997, the applicant consulted with legal counsel and requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of at least one or more of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service

- if his request for discharge was accepted, he may be discharged under other conditions other than honorable
- he would be deprived of many or all Army benefits, 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
- he elected not to submit a statement in support of his request

d. On 27 February 1998, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

e. On 16 March 1998, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 20 days of active service with no lost time.

5. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

8. 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.

9. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable discharge. He contends he experienced mental health conditions including PTSD that mitigate his misconduct. 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 27 February 1996; 2) The applicant's Charge Sheet showed court martial charges were preferred on 25 November 1997 for 3 counts of AWOL from 02 September 1997 to 03 September 1997, 10 September 1997 to 08 October 1997, and finally 17 October 1997 to 19 November 1997; 3) The applicant was discharged on 16 March 1998, Chapter 10- In lieu of trial by court-martial. His character of service was under other than honorable conditions. The applicant completed 20 days net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and the applicant's provided hardcopy medical documentation were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions including PTSD while on active service that mitigate his misconduct. There is insufficient evidence that the applicant reported or was diagnosed with any mental health conditions while on active service.

d. A review of JLV did not reveal any additional results or documentation. The applicant has not been diagnosed with a service-connected mental health condition and does not receive any service-connected disability. The applicant provided a hardcopy memorandum dated 20 May 2024 from his treating civilian mental health provider that documented that the applicant's mental health treatment for "complex PTSD" and a variety of other mental health disorders due to untreated childhood trauma beginning in May 2023. The provider reported that the applicant's symptoms were exacerbated by experiences during military service while in Kuwait, as well as his exposure to Uranium while serving in this location. These reported combat experiences are inconsistent with the applicant's service record and documentation. There is insufficient evidence provided in the applicant's record that he served in an overseas location, including in Kuwait. His mental health provider reported that since his military discharge, he has also struggled with alcoholism, depression, and 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 by his current provider with complex PTSD from childhood and other mental health conditions. The applicant reported that his childhood PTSD and other mental health conditions were exacerbated by military service and mitigate his misconduct. While the applicant did provide civilian documentation in support of his assertion, the applicant's diagnosis of PTSD and other mental health conditions contended to be present during his military service as a result of his report of events during his active service, which were notably inconsistent with his service documentation. Thus, there is insufficient documentation at

this time that the applicant was experiencing a mental health or experience that warrants mitigation of his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced preexisting mental health conditions including PTSD that were exacerbated by service and mitigate his misconduct. The applicant was diagnosed by a civilian behavioral health provider with complex PTSD in 2023, which was determined to exist prior to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced preexisting mental health conditions including PTSD during his active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence that the applicant displayed mental health difficulties prior to military service. While the applicant did provide civilian documentation in support of his assertion, the applicant's diagnosis of PTSD and other mental health conditions that were contended to be present during his military service as a result of his report of events during his active service were notably inconsistent with his service documentation. The applicant did engage in avoidant misconduct such as going AWOL, which can be a natural sequelae to some mental health conditions, including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for 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. One potential outcome discussed as to grant partial relief by upgrading the applicant's characterization of service to General, Under Honorable Conditions, based upon the misconduct involved and the evidence of PTSD submitted by the applicant. However, based upon the relatively short term of honorable service completed and the following findings outlined in the medical review related to mitigation for the misconduct:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition experience actually excuse or mitigate the misconduct? No,

the Board conclude 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
:	:	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
: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.

//SIGNED//

X

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 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets 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 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.

b. 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

4. 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.

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 (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 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.

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.

7. 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//