

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240007027

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his discharge under other than honorable conditions to an honorable discharge
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Character Reference Statement, undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120022201 on 27 June 2013.
2. The applicant states he used alcohol and drugs to cope with many of his issues at the time. This led to more serious conduct problems which eventually caused his discharge. He believes his discharge was inequitable and unfair and he should have been offered treatment and counseling, a different outcome and discharge would have been received. After separating from the service, he sought help and rehabilitation at the Fort Howard Veterans Affairs Medical Center [now inactive at the former military installation of Fort Howard, Maryland] in 1990/1991.
3. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.
4. He enlisted in the Regular Army on 9 September 1977, for 4 years. He reenlisted on 29 April 1981.
5. The applicant accepted nonjudicial punishment (NJP) on 8 February 1984, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that at

Wiesbaden Air Base, Germany on or about 2 February 1984, without authority, go from his appointed place of duty to wit: A Battery, 2d Battalion, 20th Field Artillery's arms room at about 1340 hours in violation of Article 88, UCMJ.

6. His limited available record is void of a separation packet containing the specific facts and circumstances surrounding the processing of his discharge. However, his record contains a DD Form 214, signed by him, which identifies the authority and reason for his discharge.

7. He was discharged on 29 April 1985. His DD Form 214 shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 7 years, 7 months, and 21 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10
- item 26 (Separation Code) – KFS (for the good of the service in lieu of trial by court-martial)
- item 27 (Reenlistment Code) – RE 3 and 3C (ineligible for reenlistment without a waiver)
- item 28 (Narrative Reason for Separation) – For the Good of the Service - in Lieu of Court-Martial

8. On 27 June 2013 in Docket Number AR20120022201, the ABCMR denied his request to upgrade his discharge under other than honorable conditions. The Board found he voluntarily requested for discharge in lieu of trial of court-martial which would have included his admission of guilt to an offense that authorized the imposition of a bad conduct or dishonorable discharge. As a result, the Board concluded there was insufficient evidence of an error or injustice which would warrant relief.

9. He provides an undated character reference statement from his sister (A____ P____). She notes he has excellent character, is dedicated and is extremely compassionate to others. She recalls him being admitted to the Fort Howard rehabilitation center where he successfully completed his rehabilitation. He is currently and has been the primary caretaker for their 88 year old mother.

10. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request for an upgrade of his discharge under other than honorable conditions (UOTHC) to an honorable discharge. On his DD Form 149 the applicant indicated 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 (RA) on 09 September 1977 and reenlisted on 29 April 1981, 2) he received an Article 15 on 08 February 1984 for, without authority, going from his appointed place of duty to 2d Battalion, 20th Field Artillery's arms room, 3) his record is void of a separation packet containing the specific facts and circumstances surrounding the processing of his discharge, 4) his DD Form 214 shows he was discharged on 29 April 1985 under the provisions of AR 635-200, Chapter 10, For the Good of the Service- in Lieu of Court-Martial, with a separation code of KFS, and reenlistment codes of RE-3 and 3C, 5) On 27 June 2013 in Docket Number AR20120022201, the ABCMR denied his request to upgrade his discharge under other than honorable conditions.

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. On his application, the applicant stated that he used alcohol and drugs to cope with his issues while in-service which led to more serious conduct problems and lead to his UOTHC discharge. There was no additional information available for review pertaining to the specific circumstances that led to his discharge.

e. A review of JLV shows the applicant is not service-connected through the VA for any conditions. The applicant initiated BH services through the VA on 09 June 2011 due to depression that had been ongoing since his divorce in 2004 and exacerbated by the loss of his father, being a caretaker to his mother, and job loss. Regarding in-service experiences, he reported that his friend was run over by a truck while he was in the military and that it was still stuck in his head though denied having any dreams about the event. It was also documented that he underwent drug rehabilitation in 1995-1996. He was diagnosed with Depressive Disorder Not Otherwise Specified (NOS) and Cocaine Abuse (In Remission). His diagnosis was later updated to Major Depressive Disorder (MDD), Single Episode, Severe, without Psychosis. On 05 June 2015, his diagnosis was documented as Pervasive Depressive Disorder (PDD), and it was

documented that he reported improvement in his depressive symptoms since obtaining a full-time job and he discontinued BH treatment. He was referred for treatment of MDD again in 2018 and 2024.

f. 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 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.

g. 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. VA records show he has been diagnosed and treated for Depression; however, his condition was not associated with his military service, and he is not service-connected for any conditions through the VA. 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:

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 reviews, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the absence of a separation packet, the reason for his separation and the character of service he received upon discharge. The Board was unable to determine the specific nature of the charges that led to his request for discharge. The Board considered his statement and the review and conclusions of the medical advising official. The Board found: (1) the applicant contends his misconduct was related to PTSD; (2) the applicant asserts that his condition or experience occurred

during military service; (3) the Board concurred with the advising official finding that his records were 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. VA records show he has been diagnosed and treated for Depression; however, his condition was not associated with his military service, and he is not service-connected for any conditions through the VA. The applicant did not provide evidence of post-service accomplishments in support of a Board consideration of clemency. Based on a preponderance of evidence, the Board determined that the applicant's discharge was not in error or unjust and that there was insufficient evidence to warrant an upgrade as a matter of liberal consideration.

3. 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 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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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), set policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.

a. Paragraph 3-7(a) stated 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.

b. Paragraph 3-7(b) stated 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.

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would insure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; 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.

5. 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, 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.

//NOTHING FOLLOWS//