

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240007076

APPLICANT AND HIS COUNSEL REQUEST: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of Representation and Counsel's Brief
- Exhibit 1 – Email from Applicant to W.M., 5 December 2023
- Exhibit 2 – Statement in Support of Claim for Service Connection for Post Traumatic Stress Disorder (PTSD), 15 November 2009
- Exhibit 3 – Personnel Qualification Record, 13 January 1993
- Exhibit 4 – Military Personnel Record, 2 January 1992
- Exhibit 5 – Historical Report in support of Operation Desert Shield/Storm
- Exhibit 6 – Statement in Support of Claim for Service (PTSD), 20 May 2009
- Exhibit 7 – Dr. C.W.N., Jr. Report of Medical Examination, 7 Jan 2008
- Exhibit 8, Winfield Neurology and Behavioral Health Services, Medical Records
- Exhibit 9, Tuscaloosa VA Compensation and Pension Exam, 23 August 2010
- Exhibit 10, Department of Veterans Affairs (VA) Decision, 26 April 1999
- Exhibit 11, Letter from VA Regional Office Director, 17 January 2023
- Exhibit 12, Compensation and Pension Award, 13 January 2023
- Exhibit 13, Psychiatric Evaluation, 6 March 2008
- Exhibit 14, Letter from Dr. ER., 2 June 2008
- Exhibit 15, VA Compensation and Pension Examination, 12 August 2010
- Exhibit 16, VA Rating Decision, 22 December 2021
- Exhibit 17, VA Rating Decision, 7 September 2010
- Exhibit 18, Hagel Memorandum, 3 September 2014
- Exhibit 19, Carson Memorandum, 24 February 2016
- Exhibit 20, Kurta Memorandum, 25 August 2017

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 AC97-11492 on 24 December 1997.

2. Counsel requests, on behalf of the applicant, an upgrade of his, under other than honorable conditions discharge to honorable or to general, (under honorable conditions), and a change in the narrative reason for separation to reflect "Secretarial Authority." Counsel's full brief is available for review by the Board and states in part:

a. The applicant's decision to go absent without leave (AWOL) was directly linked to his contemporaneous. The applicant had a stellar service record prior to the onset of his PTSD symptoms. If his decision to go absent without leave could be linked to some character defect rather than his PTSD, it would be reasonable to conclude that such a character defect would have manifested itself prior to his misconduct, such as when his life was in danger during the Gulf War. He never abdicated his duty when his unit was subjected to the short-range ballistic missile alerts in Cement City, nor when his unit crossed into enemy territory on G-Day, nor when his unit was called to the front lines to support a friendly armored division that had come under enemy fire.

b. The applicant was formally diagnosed with PTSD, among other mental health diagnoses, in 2010. In 2021, it was further recognized as service-connected resulting from mental health conditions that occurred during his time in the military. Prior to his combat deployment and the trauma, he experienced, [REDACTED] had no instances of misconduct and was a model soldier.

c. After joining the Regular Army, he was assigned to Alpha Company, 12th Engineer Battalion in Germany where he was a Heavy Wheel Diesel Mechanic. In 1990, he deployed to Saudi Arabia in support of Operation Desert Storm. While there, the battalion engaged in training exercises. He was also subjected to short range ballistic missile alerts at all hours of the day and night. This required him to put on his mission oriented protective posture gear in case the missiles were carrying chemical weapons. There was also the potential some of the missiles were from friendly fire. He felt this experience contributed to his PTSD.

d. On 24 February 1991, the United States and accompanying coalition forces launched the ground offensive against Iraq. He was responsible for driving his Heavy Expanded Mobility Tactical Truck (HEMTT), an eight-wheel drive, diesel-powered, 10-short-ton tactical truck. On the second day, 2nd Brigade took 50 Iraqi soldiers as prisoners of war and passed them off to his company. It was their responsibility to keep them until the military police were able to take.

e. Second Brigade came under fire, and it was his responsibility to remove disabled enemy vehicles from the battlefield. He recalled seeing several mangled, severely burned, and charred bodies. It was a traumatic experience for him. He received an Army Achievement Medal for his professionalism during that time. By the 28th of February, the ground offensive had succeeded, and Iraq accepted a ceasefire. The 12th Engineer Battalion and his company were headed towards Kuwait to prepare to fly back to Germany. Because there had been a problem with Iraqi civilians breaking into American military vehicles, they were advised, not to stop for anyone, or any reason. Unfortunately, as they were making their trip, a large crowd of Iraqi civilians ran in the road. He slowed down and prepared to stop until he was order not to. He tried to maneuver the vehicle around the large crowd, but failed to see the child that ran in the direction he headed.

f. Stricken with guilt and desperately wanting to jump out of the vehicle to check on the child, he slammed on his breaks, but was ordered to drive on. He never knew if the child was unharmed, hurt, or dead. This was like the major cause of his PTSD. When he returned from Operation Desert Storm, he received permanent change of station orders for Fort Campbell, Kentucky. His symptoms of PTSD were exhibited in the form of depression, anxiety, anger for no reason, sleepless nights and eventually flashbacks. He began to spiral and turned to alcohol as a coping mechanism. His drinking led to disciplinary actions.

g. He learned that his grandfather passed away and was granted leave. One month later his uncle who was like a brother was killed in an automobile accident. When he requested leave again, it was denied. Distraught over the loss of his uncle, he went absent without leave to attend the funeral. After the funeral, he contacted his unit and requested to rejoin them, but by then he was placed in an absent without leave status as of 1 December 1992. On 5 January 1993, he went to Fort Knox, Kentucky to be processed out of the Army. On 8 January 1993, he was presented with formal discharge paperwork and directed to sign or face a court martial and prison time. He has regretted signing the documents.

h. In 1997, the Army National Guard approved a waiver for him to continue service. to his country with them. He spent three years in the Army National Guard and 5 years in the Army Reserve. He received two promotions, advancing him to the rank of Private First Class and ended his career on 1 March 2005 with an honorable discharge.

i. He continued to struggle with PTSD, and it led his wife to consider divorce. In 2008, he visited a psychiatrist and finally was able to validate the diagnosis of PTSD. He was able to get treatment in the form of medication and therapy. In 2009, he

received a benefits decision from the Department of Veterans Affairs granting him a 50% rating for PTSD. He lives in rural Alabama and is married with three children. One has autism, one is about to start high school and the other is currently a freshman in college. Because of his discharge, she is not eligible for some of the scholarships available to children of veterans.

3. The applicant and his counsel provide:

a. An email (Exhibit 1) from the applicant to his counsel explaining how his grandfather and uncle died within one month of each other. He also provided him with more information about his family and the unit in Germany.

b. VA Form 21-0781 – Statement in Support of Claim for Service Connection for Post traumatic stress disorder (Exhibit 2) shows the applicant he was with the 12th Engineer Battalion while heading towards Kuwait between 24 through 26 February 1991.

c. Personnel Qualification Record (Part I) (Exhibit 3) shows he was awarded the military occupational specialty 63S, Heavy-Wheel Vehicle Mechanic.

d. Personnel Qualification Record (Part II) (Exhibit 4) shows the applicant was in Saudi Arabia from 16 January 1991 through 22 May 1991.

e. Captain J.J.R. and Sergeant G.C.W., authored a Historical Report of the 12th Engineer Battalion in support of Operation Desert Shield/Storm, undated (Exhibit 5).

f. Statement in Support of Claim for Service Connection for Post Traumatic Stress Disorder, (Exhibit 6) unavailable.

g. Dr. C.W.N., Jr. Report of Medical Examination conducted an examination of the applicant, (Exhibit 7)

h. W. Neurology Family Medicine and W. Behavioral Health Services, Medical Treatment Records, (Exhibit 8) is treating the applicant for PTSD.

i. Tuscaloosa Veterans Administration Compensation and Pension Exam Report, (Exhibit 9) gave the initial evaluation for PTSD.

j. Veterans Administration Decision (Exhibit 10), requesting evidence from the applicant on the circumstances of his discharge.

k. Letter from Veterans Administration Regional Office Director to the applicant (Exhibit 11), outlined the rating decision for the below conditions:

- fibromyalgia was granted with an evaluation of 40%
- migraines were granted with an evaluation of 30%
- bronchitis was denied

l. Veterans Benefits Management System Compensation and Pension Award, (Exhibit 12), provides the type of claim the applicant was eligible for and the date and amount.

m. W. Behavioral Health Services Psychiatric Evaluation (Exhibit 13), shows the applicant's chief complaint in his own words.

n. Letter from Dr. ER., W. Behavioral Health Services (Exhibit 14), indicated the applicant does display symptoms of PTSD.

o. Veterans Administration Compensation and Pension Examination (Exhibit 15) reviewed the records of the applicant, reviewing the medical history and treatment.

p. Veterans Administration Rating Decision (Exhibit 16), outlined the rating decision for the below conditions:

- PTSD with mood disorder and anxiety disorder, depressive disorder, and chronic flashbacks 50%

q. Veterans Administration Rating Decision (Exhibit 17), outlined the rating decision for the conditions that were not considered service related to include arthritis, lumbar pain, and chronic fatigue.

r. The below listed documents to be included in the references:

- Exhibit 18, Hagel Memorandum, 3 September 2014
- Exhibit 19, Carson Memorandum, 24 February 2016
- Exhibit 20, Kurta Memorandum, 25 August 2017

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

a. He enlisted in the Regular Army on 3 November 1989.

b. On 5 January 1993, the applicant surrendered to the military authorities at Fort Campbell, Kentucky. He was pending absent without leave/dropped from the roll's status from Headquarters, Headquarters Company, 4th Battalion, 101st Aviation Regiment, Fort Campbell, Kentucky.

c. A DD Form 458 (Charge Sheet) shows on 8 January 1993, court-martial charges were preferred on the applicant for one specification absenting himself with the intent to remain there, on or about 1 December 1992, and remaining so absent until 5 January 1993.

d. On 8 January 1993, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty 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 than honorable conditions
- 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

e. On 21 January 1993, the immediate commander-initiated separation action against him for the good of the service. His conduct rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. He recommended that his period of service be characterized as under other than honorable conditions. The chain of command recommended approval.

f. On 1 February 1993, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He would be separated with an under other than honorable conditions discharge.

g. On 23 February 1993, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 2 months, and 17 days of active service with 36 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For The Good of Service, In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Southwest Asia Service Medal with three bronze stars
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

- Expert Marksmanship Qualification Badge with Hand Grenade
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Driver and Mechanic Badge
- Kuwait Liberation Medal

4. On 14 November 1996, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. On 24 December 1997, the ABCMR rendered a decision in Docket Number AC97-11492. The Board determined there was no evidence, and the applicant did not provide any, which substantiated his claim that he was experiencing problems at home which resulted in his AWOL and being dropped from the roles of the Army. The applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice. The Board found insufficient evidence of in-service mitigating factors. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation and the reason for her separation were not in error or unjust.

6. By regulation (AR 635-200), 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable as well as a change in the narrative reason for separation to reflect "Secretarial Authority". 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:

- Applicant enlisted in the Regular Army on 3 November 1989.
- A DD Form 458 (Charge Sheet) shows on 8 January 1993, court-martial charges were preferred on the applicant for one specification of absenting himself with the

intent to remain so, on or about 1 December 1992, and remaining so absent until 5 January 1993.

- On 23 February 1993, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 2 months, and 17 days of active service with 36 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For The Good of Service, In Lieu of Court-Martial," with reentry code 3.

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 via counsel, he had a stellar service record prior to the onset of his PTSD symptoms. If his decision to go absent without leave could be linked to some character defect rather than his PTSD, it would be reasonable to conclude that such a character defect would have manifested itself prior to his misconduct, such as when his life was in danger during the Gulf War. He never abdicated his duty when his unit was subjected to the short-range ballistic missile alerts in Cement City, nor when his unit crossed into enemy territory on G-Day, nor when his unit was called to the front lines to support a friendly armored division that had come under enemy fire. The applicant was formally diagnosed with PTSD, among other mental health diagnoses, in 2010. In 2021, it was further recognized as service-connected resulting from mental health conditions that occurred during his time in the military. Prior to his combat deployment and the trauma, he experienced, [REDACTED] had no instances of misconduct and was a model soldier.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 90% service connected, including 70% for PTSD. The VA electronic medical record shows the applicant participated in a C and P examination on 12 August 2010 and was diagnosed with combat related PTSD based on his exposure to traumatic events while deployed.

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 1 December 1992 until 5 January 1993. The applicant is 70% service-connected for combat related 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, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One possible outcome was to grant relief based on the medical opine finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. However, upon review of the applicant's petition, available military records and medical review, the Board majority determined that the evidence does not establish a sufficient nexus between the applicant's behavioral health condition and the misconduct that led to his discharge.

2. The Board noted the applicant's period of honorable service and multiple awards and decorations prior to his misconduct. The applicant served from 1989 until late 1992, and his prolonged absence without leave (AWOL) beginning in December 1992 was a serious offense that outweighed his prior honorable service. The Board recognized the applicant's post-service medical diagnoses and hardships, these do not establish error or injustice in the original discharge proceedings. The Board noted that although his honorable service prior to AWOL is acknowledged, the applicant's misconduct occurred nearly two years after his deployment, undermining the causal connection. Based on a preponderance of the evidence, the Board found that the applicant's discharge characterization remains warranted and appropriate. Relief is denied.

3. The Board considered the following 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 1 December 1992 until 5 January 1993. The applicant is 70% service-connected for combat related PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL is mitigated by his BH condition.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	XXX	GRANT FULL RELIEF
:	:	:	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.

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. 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. 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.

2. 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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 (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.

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 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, 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 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.

6. 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