

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240007477

APPLICANT REQUESTS:

- an upgrade of his characterization of service
- a personal 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), 20 February 2002
- VA Form 21-0781 (Department of Veterans Affairs Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD)), dated 2 February 2024, wherein he explains an incident(s) that occurred while stationed at Schofield Barracks, Hawaii

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 was discharged for behavior health issues due to circumstances of misconduct caused by leadership and conditions which resulted in him being issued an under other than honorable conditions characterization of service. He is now diagnosed with PTSD.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 25 August 2000.
 - b. DD Form 458 (Charge Sheet) shows court martial charges were preferred on

22 August 2001 for being absent without leave (AWOL) from on or about 19 June 2001 to on or about 19 August 2001.

c. On 22 August 2001, he requested separation under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of court-martial.

d. On 31 January 2002, the immediate commander recommended approval and issuance of a discharge under other than honorable conditions.

e. On 8 February 2002, the separation authority approved the recommended discharge, directed he be reduced to the lowest enlisted grade, and issued an under other than honorable conditions discharge.

f. Accordingly, he was discharged under other than honorable conditions on 20 February 2002. His DD Form 214 shows he completed 1 year, 3 months, and 25 days of net active service this period.

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. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends his request is related to PTSD. 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 25 August 2000; 2) On 22 August 2001, court martial charges were preferred for the applicant going AWOL from 19 June 2001 to 19 August 2001; 3) The applicant was discharged on 20 February 2002, Chapter 10 - in lieu of trial by court-martial. His service was characterized as under other than honorable conditions. He completed 1 year, 3 months, and 25 days of 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) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD, which impacted his conduct resulting in his discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and the applicant initially connected with VA medical treatment beginning on 08 June 2021. His connection to the VA was primarily for the treatment of behavioral health disorders. There is insufficient evidence that the applicant has been diagnosed or treated for PTSD. In addition, his VA behavioral health providers did not connect any of his diagnoses to his time in service. The applicant has not been diagnosed with a service-connected mental health condition at this time, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD that mitigates the misconduct leading to his separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was diagnosed with PTSD during his time in service. The applicant did go AWOL for an extended period of time, and this type of avoidant behavior can be a natural sequelae of PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced PTSD while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that mitigates his misconduct.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL from on or about 19 June 2001 to on or about 19 August 2001. The Board acknowledged the applicant's contentions that his discharge stemmed from behavioral health issues, including a later diagnosis of PTSD, the record reflects that he voluntarily requested separation under AR 635-200, chapter 10. The Board found the applicant's misconduct was serious, and the separation authority appropriately directed an under other than honorable conditions discharge. Furthermore, the Board noted the applicant submitted no evidence of post-service achievements, rehabilitation, or character references to support clemency. In the absence of compelling mitigating factors or documentation demonstrating that his misconduct was directly attributable to behavioral health conditions, the Board determined that the characterization of service was proper and equitable at the time of discharge. Therefore, the Board denied relief.

3. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing PTSD that mitigates the misconduct leading to his separation.

b. Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD at the time of his active service that mitigates his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report that the applicant was diagnosed with PTSD during his time in service. The applicant did go AWOL for an extended period of time, and this type of avoidant behavior can be a natural sequelae of PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced PTSD while on

active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

4. 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:

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

a. Chapter 10 provided that a Soldier who had committed an offense or offenses, for which the authorized punishment included a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. Commanders will ensure that a Soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences. This paragraph also provides that the Soldier's written request will also include an acknowledgement that the Soldier understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a punitive discharge. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the Soldier's overall record during the current enlistment. For Soldiers who have completed entry level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

b. 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 than honorable characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions and when authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.

3. 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.

4. 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.

5. 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.

6. 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.

//NOTHING FOLLOWS//