

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240008009

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable
- a telephonic/video appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement
- U.S. Social Security Applications and Claims Index of [REDACTED]
- Funeral Announcement of Specialist [REDACTED]
- Three Committee on Uniform Securities Identification Procedures (CUSIP) Results
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20150006652

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20150006652 on 1 March 2016.

2. The applicant states:

a. He vehemently disagrees with the decision of his previous case, as the information presented on his behalf were by people who did not know him then and do not know who he is currently. He never condoned or initiated or condoned the crimes that were committed then, and still does not condone them today.

b. The commanding officers of the 41st Field Artillery Unit, Schweinfurt, Germany were racially and culturally biased, as they did not consider rehabilitative measures that could have possibly saved his career. He maintains that he was in the wrong place at

the wrong time. He was detained along with the person who received a five year sentence for the death of a fellow Soldier.

c. He is now more than 30 years wiser and much more disciplined than he was at the age of 19 when the incident occurred. At the time he was uninformed of all of his rights and believes it to be due to his race.

d. He selected post-traumatic stress disorder (PTSD) as an issue/condition related to his request.

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

a. He enlisted in the United States Army Reserve (USAR) on 20 February 1992.

b. On 10 August 1993 he enlisted in the Regular Army for a term of 3 years.

c. DD Form 458 (Charge Sheet) referred on 1 June 1994 shows he was charged with:

- Charge I (Article 81 – Conspiracy), Specification: The applicant, did, at or near Grafenwoehr, Germany, on or about 19 March 1994, conspire with other Soldiers to commit an offense under the UCMJ, to wit: Robbery of Specialist (SPC) [REDACTED] and SPC [REDACTED] and in order to effect the object of the conspiracy the applicant did stop the vehicle he was driving in front of the vehicle driven by the victim, so that his co-conspirators could surround the victim's vehicle, assault him, and steal his money.
- Charge II (Article 92 – Failure to Obey and Order or Regulation), Specification: The applicant, did, at or near Schweinfurt, Germany, on or about 30 June 1994, violate a lawful general regulation, to wit: United States Army Europe Regulation 600-1, dated 30 August 1990, by wrongfully operating an unregistered vehicle, without having obtained a valid license, and with registration and license plates belonging to another individual.
- Charge II (Article 107 – False Official Statement), Specification: The applicant, did, at or near, Schweinfurt, Germany, on or about 30 June 1994, with intent to deceive, make to a military policeman conducting an official investigation, an official statement, to wit: that the applicant was driving Private(PVT) [REDACTED] vehicle, with permission from PVT Dxxx, when stopped by the police, which statement was totally false, and was then known by the applicant to be so false.

d. DA Form 4430-R (Department of the Army Report of Result of Trial) dated 11 August 1994 shows he was convicted by a Special Court-Martial empowered to

adjudge a bad conduct discharge. He was sentenced to forfeit \$500 pay per month for 3 months, reduction to the lowest enlisted grade, confinement for 3 months, and a bad conduct discharge.

e. DD Form 497 (Confinement Order) dated 11 August 1994 shows he was confined as a result of court-martial.

f. On 16 December 1994, the applicant consulted with counsel and voluntarily requested a discharge in lieu of court-martial. In his request he acknowledges that he understood that he may request discharge in lieu of court-martial because of the charges preferred against him, and that at least one of the charges authorizes the imposition of a bad conduct or dishonorable discharge.

g. He also acknowledged he:

- was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person
- understood by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge
- understood if his discharge request was approved, he could be deprived of many or all Army benefits that he could be ineligible for many or all benefits administered by the Veterans Administration
- understood he could be deprived of his rights and benefits as a veteran under both federal and state laws

h. On 4 January 1995, in a memorandum from trial counsel, he confirmed on 27 December 1994, the applicant's company and battalion commanders recommended approval of his request for a Chapter 10 discharge.

i. On 18 January 1995, the separation authority approved his request for discharge in lieu of court-martial with an UOTHC discharge.

j. On 31 January 1995 he was discharged from the Regular Army with an UOTHC characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 5 months, and 21 days of net service this period.

4. The applicant provides:

a. Documents pertaining to [REDACTED] death, to include a funeral announcement, who he states in his self-authored statement was a victim of a shooting during his time in Schweinfurt, Germany.

b. Three printouts of his CUSIP results.

c. ABCMR Docket Number AR20150006652, of his initial request for a discharge upgrade that was considered by the Board on 1 March 2016.

5. On 1 March 2016, in ABCMR Docket Number AR20150006652, the Board considered the applicant's request for an upgrade of his discharge to honorable. The Board denied the request, citing the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

#### 6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable. On his DD Form 149, the applicant indicated that 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 U.S. Army Reserve (USAR) on 20 February 1991. He enlisted in the Regular Army (RA) on 10 August 1993, 2) a DD Form 458 (Charge Sheet) referred on 1 June 1994 shows three charges: Charge I: on or about 19 March 1994, conspire with other Soldiers to commit an offense under the UCMJ, to wit: Robbery, and in order to effect the object of the conspiracy the applicant did stop the vehicle he was driving in front of the vehicle driven by the victim, so that his co-conspirators could surround the victim's vehicle, assault him, and steal his money; Charge II- on or about 30 June 1994, violate a lawful general regulation, to wit: United States Army Europe Regulation 600-1, dated 30 August 1990, by wrongfully operating an unregistered vehicle, without having obtained a valid license, and with registration and license plates belonging to another individual; Charge II- on or about 30 June 1994, with intent to deceive, make to a military policeman conducting an official investigation, an official statement, to wit: that the applicant was driving another Soldier's vehicle, with permission, when stopped by the police, which statement was totally false, and was then known by the applicant to be so false, 3) DA Form 4430-R (Department of the Army Report of Result of Trial) dated 11 August 1994 shows he was convicted by a Special Court-Martial empowered to adjudge a bad conduct discharge, 4) On 16 December 1994, the applicant consulted with counsel and voluntarily requested a discharge in lieu of court-martial, 5) on 31 January 1995, he was discharged from the Regular Army with an UOTHC characterization of service. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, In Lieu of Trial by Court-Martial, with a separation code of KFS and reentry code of 3, 6) on 1 March 2016, in ABCMR Docket Number AR20150006652, the Board considered the applicant's

request for upgrade of his discharge and denied the request, citing the evidence presented did not demonstrate the existence of a probable error or injustice.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service records. There were no military medical records available for review. 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. A review of JLV shows the applicant is not service-connected through the VA for any conditions; however, it is of note that his UOTHC discharge renders him ineligible for VA clinical services. Review of JLV shows that the applicant sought assistance with housing through the VA from 27 February 2024 through 13 February 2025.

e. An Error and Injustice Letter dated 15 March 2024, authored by the applicant, and submitted as part of his application was reviewed. In the letter, he described an incident that occurred while stationed in Germany wherein another Soldier died the night of 29 July 1994 and stated that he attempted to save the Soldier's life by "placing his intestines back into his body." The applicant asserted that his detention and the death of the Soldier were the "cause and effects of the end of [his] military career."

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 during his time 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. 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, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(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. 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.

2. 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.



REFERENCES:

1. AR 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 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.

2. Army Regulation 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. For block 24 (Character of Service) the correct entry is vital as it affects a soldier's eligibility for post-service benefits. Characterization or description of service is determined by directives authorizing separation. The entry must be one of the following: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable, or uncharacterized.

3. Army Regulation (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who 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. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not being coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current

enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was 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 characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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.

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 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.

//NOTHING FOLLOWS//