

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240008158

APPLICANT REQUESTS:

- an upgrade of his characterization of service from "Under Honorable Conditions (General)" to "Honorable"
- a personal appearance (video/telephone)

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), 2 July 1992

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 in pertinent part that he would like his characterization of service upgraded to Honorable.
3. A review of the applicant's available service records reflects the following:
  - a. On 12 June 1990, the applicant enlisted in the Regular Army for 3 years with duty as a 13B (Cannon Crewmember).
  - b. On 12 July 1991, the applicant was advanced to the rank/grade of private first class (PFC)/E-3.
  - c. Between February – May 1992, the applicant was counselled by members of his immediate leadership for varying infractions to include failure to be at his appointed place of duty, misuse of government equipment and failure to obey a lawful order.

d. On 14 May 1992, the applicant's Battery Commander initiated nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for the applicant's failure to be at his appointed place of duty on 6 May 1992, in violation of Article 86 UCMJ. The applicant acknowledged the allegations and waived his rights and was subsequently reduced to the rank/grade of private (PV2)/E-2.

e. On 1 June 1992, the applicant received a mental status evaluation. He was deemed to have normal behavior, was fully alert, fully oriented, unremarkable mood or affect, clear thinking, and normal thought content. He was deemed to be mentally responsible and to have the mental capacity to understand and participate in separation proceedings.

f. On or about 16 June 1992, the applicant's Battery Commander notified him that he was initiating separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations enlisted Personnel), Chapter 14, Paragraph 14.12b for a pattern of misconduct. He was advised of his right to consult with counsel and to submit statements in his own behalf. The applicant acknowledged receipt of the proposed initiated action, consulted with counsel, and submitted statements in his own behalf. He was not entitled to an administrative separation board.

g. On 23 June 1992, the Brigade Commander directed that the applicant be discharged from the Army under the provisions of AR 635-200, Chapter 14, Paragraph 14.12b with a "General" characterization of service.

h. On 29 June 1992, Headquarters, I Corps and Fort Lewis issued Orders Number 102-1 reassigning the applicant to the U.S. Army transition point pending separation processing.

i. On 2 July 1992, the applicant was discharged from military service. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the following:

- item 24 (Character of Service) – Under Honorable Conditions (General)
- item 25 (Separation Authority) – AR 635-200, Paragraph 14-12b
- item 26 (Separation Code) – JKM
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Misconduct – Pattern of Misconduct

#### 4. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from under honorable conditions (general) to honorable. He contends PTSD and Reprisal/Whistleblower 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:

- The applicant enlisted into the Regular Army on 12 June 1990.
- Between February to May 1992, the applicant was counselled by members of his immediate leadership for varying infractions to include failure to be at his appointed place of duty, misuse of government equipment, and failure to obey a lawful order.
- On 14 May 1992, the applicant's Battery Commander initiated nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for the applicant's failure to be at his appointed place of duty on 6 May 1992, in violation of Article 86 UCMJ. The applicant acknowledged the allegations and waived his rights and was subsequently reduced to the rank/grade of private (PV2)/E-2.
- On or about 16 June 1992, the applicant's Battery Commander notified him that he was initiating separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations enlisted Personnel), Chapter 14, Paragraph 14-12b for a pattern of misconduct.
- The applicant was discharged on 2 July 1992, under the provisions of AR 635-200, paragraph 14-12b, by reason of misconduct – pattern of misconduct. His DD Form 214 shows he received an under honorable conditions (general) character of service, with separation code JKM, and reentry code of 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he would like his characterization of service upgraded to honorable. Although, he selected PTSD and Reprisal/Whistleblower on his application as related to his request, he provides no rationale or explanation for his contention.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a mental status evaluation for the purpose of separation dated 1 June 1992. The report notes no psychiatric disorder and cleared him for any action deemed appropriate by Command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected, including 50% for PTSD. The applicant has only received minimal care via the VA and there is no evidence of the applicant participating in any behavioral health services.

f. The applicant participated in a C and P examination on 17 April 2024, via a contracted provider, and was diagnosed with PTSD based on his assertion that he "deployed to Desert Storm from January 1991 to July 1991". He reported during his deployment he feared for his life and was transferred to an ammo platoon to help drive,

he “came upon the aftermath of a tank battle and there was burning bodies, and that smell and sight were distressing”.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is minimal but sufficient evidence to support the applicant had a BH condition that mitigates his discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and Reprisal/Whistleblower on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to a pattern of misconduct that included failure to be at his appointed place of duty, misuse of government equipment, and failure to obey a lawful order. Given the association between PTSD and difficulty with authority, his failure to obey a lawful order and his misuse of government equipment, would be mitigated by his BH condition. In addition, as there is an association between PTSD and avoidant behavior, there is a nexus between the applicant’s BH condition and his failure to be at his appointed place of duty.

#### 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 Board reviewed the medical advisor’s review finding minimal, but sufficient evidence to support the applicant had a behavioral health condition that mitigates his discharge. The Board majority determined there was no error or injustice in the characterization of service he received at the time of his discharge. The Board minority reviewed and concurred with the medical advisor’s review finding sufficient evidence to support a discharge upgrade.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and Reprisal/Whistleblower on his application as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 50% service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to a pattern of misconduct that included failure to be at his appointed place of duty, misuse of government equipment, and failure to obey a lawful order. Given the association between PTSD and difficulty with authority, his failure to obey a lawful order and his misuse of government equipment, would be mitigated by his BH condition. In addition, as there is an association between PTSD and avoidant behavior, there is a nexus between the applicant's BH condition and his failure to be at his appointed place of duty.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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
■	■	:	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, USC, 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. AR 635-200 (Personnel Separations – Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of soldiers for a variety of reasons. Chapter 14-12 provides that Soldiers are subject to action per this section for the following:
  - a. (Paragraph 14-12a.) - Minor disciplinary infractions - A pattern of misconduct consisting solely of minor military disciplinary infractions.
  - b. (Paragraph 14-12b.) A pattern of misconduct - A pattern of misconduct consisting of one of the following:
    - discreditable involvement with civil or military authorities
    - discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army
  - c. Paragraph 3-7a provides that 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.
  - d. Paragraph 3-7b provides that 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.
3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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.

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 Post-Traumatic Stress Disorder; 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. 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 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//