

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240008209

APPLICANT REQUESTS: in effect, an upgrade of his under honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 upon returning from Iraq in 1991, he realized he was suffering from post-traumatic stress disorder (PTSD). Since his discharge, he continues to live his life by military code. He is now sober, and his discharge is the only bad mark in his life. He loves this nation and would appreciate the consideration. The applicant marked PTSD on his DD Form 293 as a condition related to his request.
3. A review of the applicant record shows:
 - a. He enlisted in the Regular Army on 29 July 1987.
 - b. He served in Saudi Arabia 25 September 1990 to 24 March 1991.
 - c. On 4 March 1994, the applicant accepted nonjudicial punishment for one specification of wrongful use of marijuana. His punishment included reduction to specialist (SPC), E-4.
 - d. On 7 April 1994, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for commission of a serious

offense. The reason for his proposed recommendation was for his wrongful use of marijuana between on or about 30 November 1993 and on or about 29 December 1993. The applicant acknowledged receipt on the same day.

e. On 8 April 1994, after consulting with legal counsel, he acknowledged the rights available to him and the effect of waiving said rights. He further understood if he received a discharge certificate/character of service which is less than honorable, he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, an act of consideration by either board does not imply that his discharge would be upgraded. He elected to submit a statement on his behalf.

f. The applicant's statement detailed events from his exemplary service to include his deployment to Saudi Arabia in support of Operation Desert Shield and Operation Desert Storm. He believed he had seen a lot and been part of many missions where he had given 110%. If given a general discharge, it would hinder him later in life.

g. The immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions.

h. On 18 April 1994, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. He would be issued a General Discharge Certificate.

i. On 13 May 1994, he was discharged from active duty with an under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 6 years, 9 months, and 15 days of active service with no lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service Medal
- Army Commendation Medal
- Army Good Conduct Medal
- Parachutist Badge
- Noncommissioned Officer Professional Development Ribbon
- Southwest Asia Service Medal w/ bronze service star (2)
- Kuwait Liberation Medal

4. A review of the applicant's record confirms an entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as administrative correction and will not be considered by the Board.

5. On 12 December 2024, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his issue of PTSD. The applicant was provided 30 days to submit supporting documentation with a suspense of 12 January 2025. The applicant has not provided a response to date.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. 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.

8. Based on the applicant's petition referring to other mental health issues, the Army Review Boards Agency (ARBA) medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. The applicant contends his request is related to his experience of posttraumatic stress disorder (PTSD), which mitigates his misconduct. 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 29 July 1987; 2) He served in Saudi Arabia from 25 September 1990 to 24 March 1991; 3) On 4 March 1994, the applicant accepted NJP for use of marijuana; 4) The applicant was discharged on 13 May 1994, Chapter 14-12c, by reason of misconduct. His character of service was under honorable conditions (general). The applicant completed 6 years, 9 months, and 15 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD.

d. A review of JLV did not reveal any results. There is insufficient evidence that he has ever been diagnosed with any mental health disorder and there is insufficient evidence at this time that the applicant has ever received any service-connected disability for any mental health condition including PTSD at this time.

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 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 experiencing a mental health condition including PTSD during his active service. The applicant did utilize marijuana while on active service, 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. The Board considered the medical records and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no evidence beyond self-report that the applicant was experiencing a mental health condition including PTSD during his active service, post-service achievements, or letters of reference in support of a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. The Board considered the 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 experiencing a mental health condition including PTSD during his active service. The applicant did utilize marijuana while on active service, 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.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous Honorable Active Service from 19870729 to 19891128."

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states 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 the evidence.
3. 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 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

6. 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.

7. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//