

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240008611

APPLICANT REQUESTS:

- reconsideration of his prior request for medical discharge
- upgrade of his under other than honorable conditions discharge (new issue)

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

DD Form 149 (Application for Correction of Military Record) (2 applications)

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 AR20180012253 on 3 December 2020.
2. The applicant states he is requesting an upgrade of his discharge based on his injury while serving his country. He is a model citizen, has never been in trouble, and he served his country with respect and dignity. He sustained a back injury after falling from a moving truck while deployed in support of Operation Desert Storm. The injury caused stress and anxiety making it hard to continue to meet his drill obligations upon returning stateside. This caused his discharge to be labeled the way it was. He believes that during the early 1990s, he would have been looked at unfavorably for seeking treatment for his injury. Specially, mental health treatment, so he tried to manage the symptoms himself unsuccessfully. He also indicated in his application that his request is related to post-traumatic stress disorder (PTSD).
3. In refence to the applicant's request for reconsideration of his prior request for a medical discharge. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15 governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR provided the case has not been previously reconsidered. Such requests must also provide new evidence that was not considered at the time of the ABCMR's prior consideration. The staff of the ABCMR reviewed his request for reconsideration, examined the original ABCMR decision, and

reviewed the evidence submitted in support of the previous and current applications. From that review, the ABCMR staff determined the applicant did not provide new evidence with this request. Based on the foregoing, this portion of the applicant's request will not be discussed further in this record of proceedings.

4. The applicant enlisted in the U.S. Army Reserve on 16 July 1986. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he entered active duty on 27 September 1990 and arrived in Saudi Arabia on 10 November 1990.

5. The applicant's records contain DA Forms 4187 (Personnel Action) showing he departed absent without leave (AWOL) on 25 January 1991 and remained AWOL until surrendering to military authorities on 4 September 1991.

6. On 12 September 1991, court-martial charges were preferred against the applicant for his AWOL offense.

7. On 12 September 1991, after consulting with legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial, due to the charges preferred against him under the Uniform Code of Military Justice which authorized the imposition of a bad conduct or dishonorable discharge.

8. In his request, he acknowledged he was guilty of the charges against him which authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged that:

- he had not been subjected to any coercion whatsoever by any person with respect to his request for discharge
- he was advised of the facts which must be established by competent evidence beyond reasonable doubt to sustain a finding of guilty
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Veterans Administration
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of discharge under other than honorable conditions

9. On 27 January 1992, the separation authority approved the applicant's request for discharge and directed his reduction to the rank of private/E-1 and his service characterized as under other than honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged on 4 March 1992 under the provisions of Army Regulation 635-200, chapter 10, for the good of the

service in lieu of trial by court-martial, with his service characterized as under other than honorable conditions.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the previous ABCMR denial (AC95-08184, 5 February 1997), the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a referral to the Disability Evaluation System (DES). He states:

"Requesting an upgrade for my discharge and for my injury while serving my country

I sustained a back injury falling from a moving truck while deployed in support of Desert Storm. This injury caused a lot of stress and anxiety for me making it hard to continue to meet my drill obligations upon returning stateside."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows the former USAR Soldier entered active duty on 27 September 1990 and was discharged on 4 March 1992 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (17 October 1990): "Discharge for the Good of the Service – In Lieu of Court Martial."

d. The behavioral health aspects of this case will be addressed by an ARBA behavioral health advisor in a separate advisory.

e. This request was previously denied by the ABCMR on 3 December 2020 (AR20180012253). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

f. There was no medical documentation submitted with the application. Because of the period of service under consideration, there are no health care encounters in AHLTA or documents in iPERMS.

g. On 12 September 1991, the applicant was charged under article 86 of the Uniform Code of Military Justice for a period of AWOL from 25 January 1991 to 4 September 1991. Also on 12 September 1991, the applicant voluntarily requested discharge for the good of the service under provisions in chapter 10 of AR 635-200. His request was approved and he was subsequently discharged.

h. There is no evidence the applicant had any medical condition prior to his discharge which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness. Thus, there is no cause for referral to the Disability Evaluation System.

i. Based on the information currently available and in accordance with Liberal Consideration guidance, it is the opinion of the Agency medical advisor that neither an upgrade of his discharge nor a referral to the DES is warranted.

#### BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. 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 U.S. Army Reserve on 16 July 1986. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he entered active duty on 27 September 1990 and arrived in Saudi Arabia on 10 November 1990.
- DA Forms 4187 (Personnel Action) shows he departed absent without leave (AWOL) on 25 January 1991 and remained AWOL until surrendering to military authorities on 4 September 1991.
- On 12 September 1991, court-martial charges were preferred against the applicant for his AWOL offense.
- On 27 January 1992, the separation authority approved the applicant's request for discharge and directed his reduction to the rank of private/E-1 and his service characterized as under other than honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged on 4 March 1992 under the provisions of Army Regulation 635-200, chapter 10, for the good of the service in lieu of trial by court-martial, with his service characterized as under other than honorable conditions.

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 he is requesting an upgrade of his discharge based on his injury while serving his country. He is a model citizen, has never been in trouble, and he served his country with respect and dignity. He sustained a back injury after falling from a moving truck while deployed in support of Operation Desert Storm. The injury caused stress and anxiety making it hard to continue to meet his drill obligations upon returning stateside. This caused his discharge to be labeled the way it was. He believes that during the early 1990s, he would have been looked at unfavorably for seeking treatment for his injury. Specially, mental health treatment, so he tried to manage the symptoms himself unsuccessfully.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and he has not participated in treatment for any behavioral health condition. The applicant was referred to behavioral health services by his primary care provider on 3 June 2014 since he reported excessive alcohol consumption and feelings of depression. He was briefly assessed during a 20-minute consult and referred for a behavioral health intake and a medication evaluation. He did not show for his follow-up appointments. The applicant was once again referred to behavioral health by his primary care provider on 14 June 2016, due to reported depression and excessive alcohol consumption which he related to his military service. The applicant once again participated in a brief consult and, per objective measures, screened positive for alcohol abuse but negative for trauma and depression. He reported an unpredictable work schedule that made it difficult to participate in treatment and did not seek any further behavioral health services.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient 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 PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant reports experiencing stress and anxiety due to a back injury he sustained while in military service. He contends PTSD as related to his request; however, this incident of a back injury would not meet diagnostic criteria for PTSD. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The VA electronic record shows the applicant has participated in two behavioral health consults in which he reported feelings of depression and excessive alcohol consumption, however, he has not engaged in ongoing treatment and has not been diagnosed with a mental health condition other than Alcohol Abuse.

h. Per Liberal Consideration guidelines, his assertion of PTSD is sufficient to warrant consideration by the Board.

#### 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.

a. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical and behavioral health reviews, the Board concurred with the advising officials. Based on this, the Board determined the applicant's case did not warrant referral to the Integrated DES for consideration of a physical disability retirement.

b. 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 being AWOL from 25 January 1991 and remained AWOL until surrendering to military authorities on 4 September 1991, 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.

2. 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 discharge? Yes. The applicant asserts PTSD on his application as related to his request.

b. Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

c. Does the condition or experience actually excuse or mitigate the discharge? No. The applicant reports experiencing stress and anxiety due to a back injury he sustained while in military service. He contends PTSD as related to his request; however, this incident of a back injury would not meet diagnostic criteria for PTSD. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The VA electronic record shows the applicant has participated in two behavioral health consults in which he reported feelings of depression and excessive alcohol consumption; however, he has not engaged in ongoing treatment and has not been diagnosed with a mental health condition other than Alcohol Abuse.

3. Prior to the closing of the Board it was noted the applicant's DA Form 2-1 shows he served in Saudi Arabia from 10 November 1990 through 26 June 1991 and was not awarded the Kuwait Liberation Medal – Government of Kuwait, the Kuwait Liberation Medal – Kingdom of Saudi Arabia, Southwest Asia Service Medal with appropriate bronze service stars, and deployment credit in item 18 of his DD Form 214. These corrections will be administratively added to his DD Form 214.

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 to amend the decision of the ABCMR set forth in Docket Number AR20180012253 on 3 December 2020.

X //SIGNED//

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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 NOTES:

The applicant's DA Form 2-1 shows he served in Saudi Arabia from 10 November 1990 through 26 June 1991 and was not awarded the Kuwait Liberation Medal – Government of Kuwait, the Kuwait Liberation Medal – Kingdom of Saudi Arabia, Southwest Asia Service Medal with appropriate bronze service stars, foreign service credit in item 12f, and deployment credit in item 18 of his DD Form 214. Amend the applicant's DD Form 214, ending on 4 March 1992 to show:

- Kuwait Liberation Medal – Government of Kuwait
- Kuwait Liberation Medal – Kingdom of Saudi Arabia
- Southwest Asia Service Medal with three bronze service stars
- Add in item 12f: 7 months and 17 days
- Add in item 18: Service in (SWA) from 10 November 1990 through 26 June 1991

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provides that a member who has committed an offense for which the authorized punishment includes a punitive discharge, may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of VA benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. Although a general discharge is authorized, an under other than honorable conditions discharge is normally considered appropriate.

b. 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.

c. 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.

2. 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 Service Discharge Review Boards and Service Boards for Correction of Military Records 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 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 misconduct that led to the discharge.

//NOTHING FOLLOWS//