

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240008734

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to an under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 31 January 1973
- Department of Veterans Affairs (VA) Benefits Letter, unspecified date

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 AC85-08092 on 21 May 1986.

2. The applicant states he entered the Army when he was 18 years old. While in basic training he got into a fight. He did not know the English language and took a dishonorable discharge not truly knowing the meaning of it.

3. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.

4. He enlisted in the Regular Army on 2 October 1972.

5. A DD Form 458 (Charge Sheet), 15 November 1972, shows he was charged with two specifications of violation of Article 128, in that he did at on or about 14 November 1972, commit an assault upon a fellow Soldier by cutting him on the neck, chest, and back with a dangerous weapon likely to produce bodily harm, to wit; a razor blade and on 14 February 1972, commit an assault upon a fellow Soldier by cutting him on the right hand with a dangerous weapon likely to produce bodily harm, to wit: a razor blade.

6. His immediate commander transmitted court-martial charges and recommended a trial by Special Court-Martial on 15 November 1972.

7. After consulting with legal counsel on 5 December 1972, the applicant voluntarily requested discharge for the good of the service 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.

8. His immediate and intermediate commanders disapproved his request and recommended he stand trial. His brigade commander recommended that he be discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial.

9. The separation authority approved his request for discharge on 22 January 1973, in lieu of trial by court-martial, and directed that he be issued an undesirable discharge certificate.

10. He was discharged on 31 January 1973. His DD Form 214 shows:

- his rank/grade as private/E-1
- he was credited with the completion of 3 months and 29 days of total active service
- he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial
- his service was characterized as under other than honorable conditions

11. He provides a VA benefits letter that denied his pension benefits due to his dishonorable discharge.

12. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. The ADRB determined he was properly and equitably discharged and denied his request on 5 March 1985.

13. On 21 May 1986 in Docket Number AC85-08092, the ABCMR denied his request to upgrade his discharge. The Board found he voluntarily requested discharge in lieu of trial by court-martial, which would have included his admission of guilt to an offense that authorized the imposition of a bad conduct or dishonorable discharge. As a result, the Board concluded there was insufficient evidence of an error or injustice which would warrant relief.

14. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to an under honorable conditions (general) discharge. 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 Regular Army (RA) on 02 October 1972, 2) A DD Form 458 (Charge Sheet) dated 15 November 1972 shows he was charged with two specifications of violation of Article 128 (assault), 3) after consulting with legal counsel on 5 December 1972, the applicant voluntarily requested discharge for the good of the service under the provisions of AR 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial, 4) the applicant was discharged on 31 January 1973 under the provisions of AR 635-200, Chapter 10, For the Good of the Service-In Lieu of Trial By Court-Martial, 5) the applicant's previous petition to the ADRB was denied on 05 March 1985, 6) On 21 May 1986, ABCMR Docket Number AC85-08092, shows the Board denied his previous request to upgrade his discharge.

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 in-service 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. Since being discharged from the military, review of the applicant's VA clinical treatment records show he has been diagnosed with Major Depressive Disorder (MDD) (documented as both as with and without psychotic features) (also diagnosed as Depression and Depressive Disorder NOS), Adjustment Disorder, Unspecified, Alcohol Use Disorder, In Sustained Remission, and Alcohol Abuse, Early Remission. He initially sought BH treatment through the VA on 17 June 2010 due to alcohol use and upon further evaluation was also diagnosed with Depressive Disorder Not Otherwise Specified (NOS) on 05 August 2010. Throughout the record, his depression was attributed to various stressors to include divorce, employment, and finances. His diagnosis of MDD was not attributed to his military service nor did his treating provider(s) specify the date of onset as during his military service.

e. 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 event 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.

f. 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. There were no in-service medical records available for review and the applicant is not service-connected through the VA for any conditions. Since being discharged from the military, VA treatment records show the applicant has been diagnosed with MDD/Depression, Adjustment Disorder, Unspecified, AUD, In Sustained Remission, and Alcohol Abuse, which was diagnosed over 30 years following his discharge from the military. His diagnosis of Adjustment Disorder is subsumed by his diagnosis of MDD. It is of note that alcohol and substance use disorders do not constitute mitigating conditions. Although records show the applicant has been diagnosed with a potentially mitigating BH condition through the VA, MDD, his treating provider(s) did not document the date(s) of onset as being during his military service. There was no medical documentation available for review showing a diagnosis of PTSD. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues 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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the violent misconduct towards another which led to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or 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.

4. 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.

//NOTHING FOLLOWS//