

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240009069

APPLICANT REQUESTS: an upgrade of his characterization of service from general, under honorable conditions to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement

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, in effect, his discharge was based on a domestic violence incident. In the incident, there was no physical violence. It was a party where he and his wife had a heated verbal argument related to her infidelity while he was deployed to Operation Desert Storm. They were struggling to salvage their marriage since they had a 15-month-old daughter, and he made a hasty decision to take the chapter and move on. He realizes now, years later, that having just returned from combat he was not in the mindset to make his best decisions. He is currently under review for disability for anxiety and post-traumatic stress disorder.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 9 August 1985.
 - b. On 22 May 1990, at Fort Stewart, GA, the applicant was found guilty by a special court-martial of two specifications of Driving Under the Influence (DUI). The court sentenced him to reduction to specialist/E-4, forfeiture of \$250.00 pay a month for a period of four months, and 60 days restriction to the limits of the unit, not to commence until after Mrs. M_ was back from the hospital after giving birth.

c. He was barred from reenlistment on 9 August 1991. The DA Form 4126-R (Bar to Reenlistment) shows in block 10 (Other Factual and Relevant Indicators of Untrainability or Unsuitability) on:

- 17 May 1991 – assault consummated by a battery/spouse abuse, military police (MP) blotter
- 4 June 1991 – Memorandum of Reprimand by the acting commander
- 19 July 1991 – Assault consummated by a battery/spouse abuse, MP blotter

d. On 9 September 1991, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12c, commission of a serious offense. The commander listed the following reasons for the proposed action: conviction by special court-martial of two DUI offenses and two different reported assaults consummated by a battery against spouse. He acknowledged receipt on 9 September 1991.

e. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

f. His chain of command recommended approval, with a general, under honorable conditions discharge.

g. On 19 September 1991, the separation authority approved the separation and directed he receive a general, under honorable conditions discharge.

h. Accordingly, he was discharged on 23 October 1991, and his service was characterized as general, under honorable conditions. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 years, 2 months, and 15 days of net active service this period. This form also shows service in Southwest Asia from 26 August 1990 to 28 March 1991.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within the Board's 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from general, under honorable conditions to honorable. He contends PTSD and OMH 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 Regular Army on 9 August 1985.
- On 22 May 1990, the applicant was found guilty by a special court-martial of two specifications of Driving Under the Influence (DUI). The court sentenced him to reduction to specialist/E-4, forfeiture of \$250.00 pay a month for a period of four months, and 60 days restriction to the limits of the unit, not to commence until after Mrs. M_ was back from the hospital after giving birth.
- Applicant was barred from reenlistment on 9 August 1991. The DA Form 4126-R (Bar to Reenlistment) shows in block 10 (Other Factual and Relevant Indicators of Untrainability or Unsuitability) on:
 - 17 May 1991 – Assault consummated by a battery/spouse abuse, military police (MP) blotter
 - 4 June 1991 – Memorandum of Reprimand by the acting commander
 - 19 July 1991 – Assault consummated by a battery/spouse abuse, MP blotter
 - On 9 September 1991, his commander notified him of his intent to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12c, commission of a serious offense. The commander listed the following reasons for the proposed action: conviction by special court-martial of two DUI offenses and two different reported assaults consummated by a battery against spouse. He acknowledged receipt on 9 September 1991.
- Applicant was discharged on 23 October 1991. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c, misconduct - commission of a serious offense, with his service characterized as general, under honorable conditions. He was assigned separation code JKQ and RE code 3.

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 his discharge was based on a domestic violence incident. In the incident, there was no physical violence. It was a party where he and his wife had a heated verbal argument related to her infidelity while he was deployed to Operation Desert Storm. They were struggling to salvage their marriage since they had a 15-month-old daughter, and he made a hasty decision to take the chapter and move

on. He realizes now, years later, that having just returned from combat he was not in the mindset to make his best decisions. He is currently under review for disability for anxiety and post-traumatic stress disorder.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant did provide hardcopy documentation of a mental status evaluation for the purpose of separation, dated 30 July 1991. The evaluation indicates the applicant did not meet diagnostic criteria for a behavioral health condition and was cleared for any administrative action deemed appropriate by command. A medical evaluation for the purpose of separation, dated 31 July 1991, notes no psychiatric or neurological concerns.

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.

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 and OMH 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 contends PTSD and OMH as related to his request. However, he provides no medical documentation substantiating his assertion. 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 not participated in any behavioral health treatment.

h. Per Liberal Consideration guidelines, his assertion of PTSD and OMH 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. 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 noted there is no evidence of any in-service behavioral health diagnoses, and the VA has not service-connected the applicant for any behavioral health condition. Upon review of the applicant's petition, available military records and medical review, 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 of behavioral health assessments, 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 discharge? Yes. The applicant asserts PTSD and OMH 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 contends PTSD and OMH as related to his request. However, he provides no medical documentation substantiating his assertion. 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 not participated in any behavioral health treatment.

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:

Mr 1	Mr 2	Mr 3
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: : : 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 record shows his DD Form 214 for the period ending 23 October 1991, is missing required entries. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 850809 UNTIL 890126

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

4. 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.

5. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//