

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240009275

APPLICANT REQUESTS: reconsideration of his three previous requests for:

- a. an upgrade of his under other than honorable conditions character of service and
- b. correction of his separation authority to show a chapter 14, for patterns of misconduct instead of a chapter 10, in lieu of trial by court-martial in accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

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) in lieu of DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored statement, dated 11 July 2024

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 Dockets Number AR20150000476, AR20160002741, AR20180011408, on 6 October 2015, 26 October 2017, and on 27 July 2020, respectively.

2. The applicant states:

a. He wishes to submit information about himself growing up and his experiences in the U.S. Army, which he thinks will lend insight into his character and help the Board better understand what he experienced. His parents believed in discipline; thus, he always strived to be the best he could be at whatever he did. He earned numerous awards and accolades for sports, band, the Rotary Club, and received a scholarship from Lockheed Aircraft.

b. At the age of 19, he and his high school sweetheart found out they were going to have a baby, and he decided the military would be able to provide the steadiest income

for raising a family; thus, he joined the Army. He excelled in basic combat training, serving as the guidon bearer, completing the 15-mile march when most of the battalion did not, completing the gas chamber exercise, performing well at the range, and being the runner-up for Soldier of the Cycle. That is when he started having problems with his feet. After seeking medical evaluation, he was informed his arches were falling and the doctor told him the condition was severe enough to warrant a medical discharge. He decided to decline the medical discharge, because at 20 years old, it just didn't seem like a good option for him. He felt everyone in his platoon looked up to him and he didn't want to let them down.

c. His first duty station was Fort Riley, KS, where he found an apartment, got settled in, then requested leave to go home to California to get his wife and son to bring them back to Kansas. Being so young and away from her parents was challenging for his wife and she decided to move back home. He used the 5 days of leave they were given to travel to California right after Christmas and into the new year. Since he had duty on 30 December 1989 during the holiday period, he asked a fellow Soldier to swap duties with him. He didn't learn he had been considered absent without leave (AWOL) the entire time because Private D ___ showed up to duty late until his return to Fort Riley, from the holiday break on 2 January 1990. Even though Private D ___ admitted to swapping duties with him, he was still charged with being AWOL and given nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ).

d. He was reduced in rank and given extra duty requirements in conjunction with his NJP, which constitutes being punished twice for the same infraction. His first sergeant made him do all kinds of extra duty without receiving credit for the work, such as scrubbing toilets, cleaning all the bathrooms, and trying to humiliate him by having him ride the lawn mower from the motor pool to the barracks for everyone to laugh at him. He sought advice at the Judge Advocate General's office afterward, where he was told these practices were unsafe and he did not have to be subjected to ridicule. When he told his first sergeant what he was advised, he was written up and called the "new barracks lawyer." This type of harassment continued for almost a month before finally settling down.

e. He did not know at the time, but the AWOL charges were not dismissed even though he was told they would be. He was also unaware that his first sergeant requested his discharge at that time as well. In April of that same year, he requested two weeks of leave and he had 27 days of accumulated leave. His request went through the proper chain of command and even went before the chaplain who recommended granting him leave to help his wife get adjusted to the idea of moving back to Kansas. Despite the endorsement from the chaplain, his first sergeant denied his leave request, stating he already had one strike against him because his wife was white.

f. He felt very desperate because his family needed him, and he had to deal with racism and discrimination from those who were supposed to be leading by example. He made a choice to temporarily go home to California to comfort his wife and son and try to help them understand how returning to Kansas was the best choice for their family. He was gone for 29 days, and he was again charged with being AWOL when he returned to Fort Riley. Now he had two charges of AWOL - although the first charge was to be dropped - so they could try to prove there was a pattern of misconduct in his behavior.

g. He realizes going home for 29 days was a bad judgement decision on his part, but the way he was treated in the military was not just or legal, and was never addressed. It continued to get worse until he finally chose discharge over transfer to another platoon. He has always been an upstanding citizen and Soldier, despite the fact that people will only remember the mistakes one makes. What happened to him was unjust and he did not deserve the discrimination, racism, or humiliation he endured.

h. These events have affected the rest of his life. It was difficult to find a way to support his family after being discharged as he was. He subsequently went through a divorce and suffered humiliation from the leaders in his platoon, as well as the humiliation he faced outside of the military. He experienced racism first-hand from those he was supposed to be able to look up to and admire.

i. He asserts his separation under the provisions of Chapter 10 of Army Regulation 635-200 should have been under the provisions of Chapter 14, but the command manipulated the system. He accepted the discharge because the harassment he received at the time was so great and the legal officer helping him to fight the discharge action told him he would be able to appeal the action at a later date. He further notes his discharge violated his 5th Amendment and 14th Amendment rights.

3. On his DD Form 293, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.

4. The applicant enlisted in the Regular Army on 29 September 1988, for 4 years.

5. DA Form 4187-E (Personnel Action), on 29 December 1989, shows his duty status was changed from "present for duty" to "AWOL" effective 28 December 1989.

6. DA Form 4187, on 4 January 1990, shows his duty status was changed from "AWOL" to "present for duty" effective 2 January 1990.

7. DA Form 4187-E, on 20 April 1990, shows his duty status was changed from "present for duty" to "AWOL" effective 19 April 1990.

8. DA Form 4187-E, on 21 May 1990, shows he surrendered to his unit at Fort Riley, KS and his duty status was changed from "AWOL" to "present for duty" effective 18 May 1990.

9. After consulting with legal counsel on 14 August 1990, he 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. He understood the charge against him was for two violations of Article 86 (AWOL), of the UCMJ.

a. He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.

b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected not to submit a statement in his own behalf.

10. His immediate and intermediate commanders recommended approval of his request and recommended 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 and be issued an under other than honorable conditions discharge.

11. The separation authority approved his request for discharge on 23 August 1990, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He directed the applicant's reduction to the lowest enlisted grade and his discharge with an under other than honorable conditions character of service.

12. He was discharged on 19 September 1990. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 1 year, 10 months, and 17 days

- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Chapter 10
- item 26 (Separation Code) – KFS (good of the service in lieu of court-martial)
- item 27 (Reenlistment Code) – 3
- item 28 (Narrative Reason for Separation) – For the Good of the Service – in Lieu of Court-Martial
- item 29 (Dates of Time Lost During This Period) –
 - 28 December 1989 – 1 January 1990
 - 19 April 1990 – 17 May 1990

13. He petitioned the ABCMR for an upgrade of his discharge. In Docket Number AR20150000476, the ABCMR determined he was properly and equitably discharged and denied his request on 6 October 2015.

14. He once again petitioned the ABCMR for an upgrade of his discharge as well as the correction of his separation authority to show a Chapter 14, discharge for patterns of misconduct instead of a Chapter 10 discharge, in accordance with Army Regulation 635-200. In Docket Number AR20160002741, the ABCMR determined he was properly and equitably discharged in accordance with applicable regulations and that his rights were fully protected throughout his separation process. Therefore, his request was denied on 26 October 2017.

15. He, for a third time, petitioned the ABCMR for an upgrade and change in the type of separation he received. In Docket Number AR20180011408, the ABCMR determined the evidence did not demonstrate the existence of a probable error or injustice. As a result, the Board, determined the overall merits of his case were insufficient as a basis to amend the decision set forth in Docket Number AR20160002741 on 26 October 2017 and Docket Number AR20150000476 on 6 October 2015.

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

17. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge and other applicable administrative changes. The applicant contends his request is related to his experience of PTSD impacted the circumstances of his discharge. 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 US Regular Army on 29 September 1988; 2) The applicant went AWOL twice, from 28 December 1989 to 1 January 1990 and from

19 April 1990 to 17 May 1990; 3) The applicant's charge sheet was unavailable for review; 4) The applicant was discharged on 19 September 1990, 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. He completed 1 year, 10 months, and 17 days of net active service; 5) On 6 October 2015, 26 October 2017, and 6 October 2015, the ADRB has previously reviewed his case and ruled that his discharge was proper and equitable.

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

c. The applicant asserts he experienced PTSD which impacted his conduct resulting in his discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was examined, and the applicant connected with VA medical treatment beginning on 19 August 2014. He has intermittently engaged in VA behavioral health care since 23 October 2014, for the treatment of a variety of depressive and anxiety disorders including PTSD (from childhood abuse). He has also received brief treatment for unspecified cannabis related disorder and unspecified tobacco-related disorder. His VA behavioral health providers did not connect any of his diagnoses to his time in service. The applicant has not been diagnosed with a service-connected mental health condition at this time, and he does not receive any service-connected disability.

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 service-connected 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. The applicant was intermittently diagnosed with PTSD by VA providers, which was attributed to childhood abuse experiences.

(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. There is no documentation regarding any behavioral health conditions or treatment including PTSD that were attributed to his time in service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, the applicant contends he experienced PTSD during his time in active service. However, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health condition including PTSD during his time in service. The applicant did repeatedly go AWOL for extended periods of time, 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 evidence of record shows the applicant was reported AWOL from on or about 28 December 1989 to on or about 2 January 1990, from on or about 19 April 1990 to on or about 18 May 1990, 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.

2. The Board found no error or injustice in the separation proceedings, separation authority, or the designated characterization of service. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board also reviewed and concurred with the advisory opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that mitigates his misconduct. Therefore, the Board denied relief.

3. 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 misconduct? Yes, the applicant contends he was experiencing PTSD that mitigates the misconduct leading to his separation. The applicant was intermittently diagnosed with PTSD by VA providers, which was attributed to childhood abuse experiences.

b. 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. There is no documentation regarding any behavioral health conditions or treatment including PTSD that were attributed to his time in service.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, the applicant contends he experienced PTSD during his time in active service. However, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health condition including PTSD during his time in service. The applicant did repeatedly go AWOL for extended periods of time, 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 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 amendment of the ABCMR decision rendered in Docket Number AR20180011408 on 27 July 2020.

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. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

e. 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. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the Reserve. The regulation provides that prior to discharge or release from active duty individuals will be assigned Reenlistment Eligibility (RE) codes based on their service records or the reason for discharge. Chapter 3 of this regulation prescribes basic eligibility for prior service applicants for enlistment. Table 3-1 includes a list of the RE codes, and states:

- an RE code of "1" applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- an RE code of "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable; they are ineligible unless a waiver is granted
- an RE code of "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations, which identify reasons for and types of separation from active duty. The separation code "KFS" is the correct code for Soldiers separating under Army Regulation 635-200, chapter 10, for the good of the service – in lieu of court-martial.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (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.

6. 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; 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.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs, on 25 July 2018, 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.

//NOTHING FOLLOWS//