

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002069

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Report of Separation from Active Duty)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he had stress due to an Inspector General, deployment readiness mission inspection and a field training maneuver. He was also stressed dealing with his wife, who wasn't happy. He had pain in his shoulders that he was self-medicating for because doctors at the hospital said that it was all in his head; and threatened to have him disciplined if he came back on sick call for it. The stress took a toll on him. The pressure and mental stress were extreme.

a. He was arrested and put in jail. He lost his family and his freedom. He was notified of his discharge for the good of the service. He had plenty of time to think and get some help and understand what happened and how, he did not find or get help in the Army. The stress was too much for him to cope with. He lost everything and didn't realize it was happening until he was in jail.

b. Stress is hard to control, and the Army is a hard and unforgiving task master. He was given a Veterans Affairs benefit card and he brought this discharge up and was told all he needed was one honorable discharge, which he has. Now it is all being

questioned four or five years later. He does not believe that losing his benefits is fair or right. He has been a truck driver for over 20 years.

3. The applicant enlisted in the Regular Army on 21 June 1971 for three years. His military occupational specialty (MOS) was 12B (Combat Engineer).
4. The applicant served in Germany from 25 January 1972 through 10 June 1974.
5. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 4 May 1972, for operating a U.S. Army vehicle without a valid operator's license on or about 26 April 1972; his punishment consisted of forfeiture of \$50.00 for one month
 - 15 January 1973, for failing to obey a lawful order on or about 30 December 1972; his punishment consisted of restriction, extra duty, and forfeiture of \$50.00 (suspended)
 - 8 May 1974, for committing an indecent assault upon Mrs. EFS__ on or about 24 April 1974; his punishment consisted of reduction to private first class/E-3, and extra duty
6. The applicant was honorably released from active duty on 2 July 1974 and transferred to the U.S. Army Reserve (USAR). His DD Form 214 shows he completed 3 years and 12 days of net active service this period. He was awarded or authorized the National Defense Service Medal.
7. The applicant served honorably in the USAR from 3 July 1974 to 26 February 1976.
8. He enlisted in the Minnesota Army National Guard on 27 February 1976 for one year.
9. The applicant re-enlisted in the Regular Army on 30 September 1977 for four years. His MOS was 62B (Construction Equipment Repairer) and later 63W (Wheel Vehicle Repairer).
10. The applicant had time lost from 3 May 1980 through 17 June 1980 due to civil confinement. He was arrested and confined for pointing a weapon at another, assault on a police officer, charging a firearm in the city, obstruction of police, disorderly conduct, and terroristic threats. On 6 May 1980 he was found guilty of the charges and sentenced to a minimum of two years hard labor; however, it is provided that after the first 90 days served the rest of the sentence was suspended. On 18 June 1980, he was returned to present for duty.

11. By letter, from an Attorney at Law WAO, dated 28 October 1980, shows the applicant's commander was contacted in reference to action taking place for the recommendation for retention of the applicant in the Army. The attorney represented the applicant through his criminal proceedings in Superior Court of Muscogee County, GA. The charges against the applicant were not of a serious nature with the most serious charge being what is known as "terroristic threats", stemming from the fact that the applicant allegedly made several threats while under the influence of alcohol. At the time of the incident the applicant was under great emotional stress due to financial problems. If the applicant would plead guilty to the charges, he would be given a 45-day sentence to serve in jail and as a further condition would have some psychiatric guidance in resolving the emotional problems he had as a result of both physical and domestic problems. The attorney recommended the Army retain the applicant.

12. A Report of Board Proceedings, Board of Officers, shows the board recommended approval and retention of the applicant in service.

13. The applicant reenlisted in the regular Army on 29 December 1981 for three years.

14. Court-martial charges were preferred against the applicant on 28 May 1982, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with drawing a weapon, a 12-gauge shot gun against Captain [REDACTED] on or about 28 April 1982.

15. The applicant was placed in confinement on 28 April 1982.

16. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service-in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He did not elect to submit a statement in his own behalf.

17. On 3 September 1982, the applicant's request for discharge was determined to be legally sufficient and his chain of command recommended approval.

18. The separation authority approved the applicant's request for discharge on 3 September 1982, in lieu of trial by court-martial. He directed that the applicant be reduced to the lowest enlisted grade and receive a DD Form 794A (UOTHC Discharge Certificate).

19. The applicant was discharged accordingly on 10 November 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial. His service was characterized as UOTHC. He completed 4 years, 5 months, and 8 days of net active service this period. He lost time from 3 May 1980 to 17 June 1980 and 28 April 1982 to 10 November 1982.

20. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

21. In reference to the applicant's benefits, decisions of the Veterans Administration are solely within the jurisdiction of that agency. While the ABCMR can correct errors in an individual's military records it has no authority to direct or influence decisions by other agencies.

22. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

23. MEDICAL REVIEW:

a. The applicant is requesting upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to Other Mental Health issues.

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: 1) The applicant enlisted into the Regular Army on 21 June 1971 and was honorably released and transferred to the U.S Army Reserves on 2 July 1974; 2) He reenlisted in the Regular Army on 30 September 1977, and again on 29 December 1981. As outlined in the ROP, the applicant committed serious misconduct during each enlistment period; 3) Court-martial charges were preferred against him on 28 May 1982 for drawing a 12-gauge shotgun against an Army Officer on 28 April 1982; 4) The applicant was placed in confinement on 28 April 1982; 5) The applicant consulted with legal counsel and subsequently requested discharge under provisions of Chapter 10, of AR 635-200; 6) The separation authority approved the applicant's request for discharge on 3 September

1982, in lieu of trial by court-martial. He directed that the applicant be reduced to the lowest enlisted grade and receive a DD Form 794A (UOTHC Discharge Certificate); 7) The applicant was discharged accordingly on 10 November 1982.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile was a SF 513 (Clinical Record/Consultation Form, dated 25 October 1977, that noted the applicant reported that he was just starting AIT and feeling persecuted. He also noted he would hurt someone if things did not change. He was diagnosed with Situational Anxiety and referred to Chaplain Services. Another SF 513, dated 21 January 1980 showed the applicant underwent psychological assessment, as a referral from Ortho. Testing showed the applicant with a history of exaggerated physical complaints, and sympathy-seeking. It was further noted tests suggested the applicant emotionally immature, narcissistic, with poor coping skills, and uses somatization and repression to cope with tension and conflict. The provider also noted that "during interview the [applicant] was disheveled in appearance and appeared moderately sad and hostile. [Applicant] reported feeling tension and stress from conflicts with supervisors at work, and in association-with home life (i.e., wife is pregnant), [applicant] reported he is getting run-around from medical system, and prescribed medications have not relieved his distress. There is strong suggestion of functional contribution to [applicant's] current somatic complaints, however, structural contributions cannot be ruled out altogether". No diagnosis was rendered. A review of JLV showed the applicant with a considerable medical treatment history but records appeared void of any BH treatment history and were void of a service-connected disability. No civilian BH records were provided for review.

d. The applicant is requesting an upgrade of his UOTHC discharge to honorable and contends his misconduct was related to Other Mental Health Issues. A review of the records showed the applicant was diagnosed with Situational Anxiety during service. JLV appeared void of any post-service diagnosis and the applicant did not provide additional civilian BH records for review. As Situational Anxiety does not render one unable to differentiate between right and wrong and adhere to the right, there is no nexus between the applicant's misconduct characterized by drawing a weapon on an Army Officer and his diagnosis of Situational Anxiety, and therefore insufficient evidence to support a change to his discharge characterization.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant did have an experience or condition during his time in service, however, the condition did not mitigate.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant was diagnosed Situational Anxiety, while on active duty.

(2) Did the condition exist or experience occur during military service? Yes. The condition was diagnosed while the applicant was in AIT.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records showed the applicant was diagnosed with Situational Anxiety during service. JLV appeared void of any post-service diagnosis and the applicant did not provide additional civilian BH records for review. As Situational Anxiety does not render one unable to differentiate between right and wrong and adhere to the right, there is no nexus between the applicant's misconduct characterized by drawing a weapon on an Army Officer and his diagnosis of Situational Anxiety.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. The Board noted the applicant's diagnosis; however, the Board agreed there is no nexus between the applicant's misconduct and the condition. Based on the lack of documentation showing in-service mitigating factors to overcome the misconduct or evidence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board concluded that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.






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. Title 10, U.S. Code (USC), 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence

and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 provided that a member who had 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. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. 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 UOTHC 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. 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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//