

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20230002800

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), dated 8 December 2022
- DD Form 149 (Application for Correction of Military Record), dated 5 December 2022

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 at the time of his separation, he was being seen by a psychiatrist for depression and taking medication. He wanted to rejoin his wife and four small children; he had been married for three years after completing college. He thought joining the Army would help their financial problems at the time.
3. On his DD Form 149, the applicant notes other mental health as related to his request.
4. On 14 April 1987, the applicant enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman).
5. On 28 August 1987, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 31 August 1987.

6. On 4 September 1987, the applicant was again reported as AWOL and remained absent until he returned to military authorities on 6 September 1987.
7. On 15 September 1987, the applicant was again reported as AWOL and remained absent until he returned to military authorities on 16 September 1987.
8. On 19 September 1987, the applicant was again reported as AWOL and remained absent until he returned to military authorities on 20 September 1987.
9. On 26 September 1987, the applicant was again reported as AWOL and remained absent until he returned to military authorities on 30 September 1987.
10. On 5 October 1987, the applicant was again reported as AWOL and remained absent until he returned to military authorities on 8 October 1987.
11. Court-martial charges were preferred against the applicant for violations of the uniform code of military justice (UCMJ); however, the relevant DD Form 458 (Charge Sheet) is not available for review.
12. On 21 October 1987, the applicant was placed in confinement by military authorities. A checklist for pretrial confinement, shows the applicant was charged with five specifications of going AWOL.
13. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
14. The applicant was discharged on 24 November 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service - in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Codes 3, 3B, and 3C. He completed 6 months and 1 day of net active service this period with 70 days of lost time.
15. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The applicant has provided no evidence that would indicate the contrary.
16. 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.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He contends other mental health condition mitigates his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 14 April 1987.
- Court-martial charges were preferred against the applicant for violations of the uniform code of military justice (UCMJ). On 21 October 1987, the applicant was placed in confinement by military authorities. A checklist for pretrial confinement, shows the applicant was charged with five specifications of going AWOL.
- The applicant was discharged on 24 November 1987. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service - in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states at the time of his separation, he was being seen by a psychiatrist for depression and taking medication. He wanted to rejoin his wife and four small children; he had been married for three years after completing college. He thought joining the Army would help their financial problems at the time. He reports wanting the upgrade in order to obtain the status and benefits of being a veteran.

e. Due to the period of service, no active-duty electronic medical records were available for review and no hard copy medical documentation from the time of service were submitted for review. In addition, no medical documentation post-military service substantiating his assertion of depression were submitted for review. Applicant is not service connected and there are no VA electronic medical records (JLV) available for review.

f. After review of all available documentation, there is insufficient evidence of any mitigating BH conditions. There is no evidence of any in-service BH diagnoses, and the VA has not diagnosed applicant with any BH conditions. And while the applicant self-asserted having depression during military service, the applicant did not provide any medical documentation of the diagnosis. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is no evidence to support that the applicant had a BH condition during his time in service that would mitigate his misconduct.

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 contends other mental health condition mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserted having depression during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH conditions. There is no evidence of any in-service BH diagnoses, and the VA has not diagnosed the applicant with any BH conditions. And while the applicant self-asserted having depression during military service, the applicant did not provide any medical documentation of the diagnosis.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application and all supporting documents and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered applicant's contentions, military record and regulatory guidance. The Board considered supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board noted the applicant's length and nature of the misconduct and the reason for separation. After due consideration of the case, given the severity of the misconduct and, in the absence of mitigating circumstances, post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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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 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.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 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. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The

memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

6. 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, BCM/NRs 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//