

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20230002896

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)
- Letter from parents on behalf of the servicemember
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Birth certificate
- Medical documents

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 AR20160008624 on 18 December 2018.

2. In a new argument, the applicant states after being released from the military, he has become very withdrawn from family and the public. He was diagnosed with schizophrenia. He has been homeless, living in the woods, and eating from restaurant garbage bins for over two years. Due to his altered mental status and homelessness, he was institutionalized numerous times, but left the facilities against medical advice. He is in a stable environment with a family member, but he does not have proper medical care. He becomes very delusional, hallucinates often, and continuously walks away from home without notice. When the voices, he states, talks to him, he is determined that no one is going to keep him from traveling to his target destination on foot. He has walked from one State to another without complaining of the pain in his feet. Once a month, a shot is administered by mental health services, which is not enough. He needs continuous psychological evaluations. His parents are getting older, and they would like to know that he is receiving the best care. Even though his discharge was not honorable, nevertheless, he served his country.

3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) and other mental health as contributing and mitigating factors in the circumstances that resulted in his separation.
4. On 28 December 1995, the applicant enlisted in the Regular Army, for 4 years. Upon completion of training, he was awarded military occupational specialty 19K (M1 Armor Crewman).
5. The applicant received formal counseling on the following dates/for:
 - 18 June 1996; taking personal property from another person's room
 - 28 June 1996; disrespecting a noncommissioned officer and underage drinking
 - 7 August 1996; writing bad checks
 - 8 August 1996; being late for formation
6. On 20 August 1996, the applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for violating a lawful general regulation by wrongfully drinking underage on or about 25 June 1996; and being disrespectful in deportment toward a noncommissioned officer on or about 25 June 1996. His punishment included reduction in grade to E-1, forfeiture of \$204.00 pay for one month, and 14 days restriction and extra duty.
7. On 6 November 1996, the applicant received NJP under Article 15 of the UCMJ, for writing bad checks on 18 separate occasions between on or about 4 June 1996 and on or about 27 June 1996. His punishment included 14 days restriction and extra duty.
8. On 3 December 1996, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
9. Court-martial charges were preferred against the applicant on 16 January 1997, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with seven specifications of stealing property from another Soldier; one specification of wrongful appropriation a motor vehicle from another Soldier; and one specification of unlawful entry into the barracks room of a Soldier with intent to commit a criminal offense.
10. On 7 February 1997, 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 bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, 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 submitted a statement in his own behalf stating that he did not steal from other Soldiers; however, he admitted that he did pawn some of their personal items. He knew that he had not been a good Soldier; however, he was not a thief. He did not want to experience a court-martial for something he did not do. He asked that his Chapter 10 be accepted.

11. By legal review on 20 February 1997, the applicant's Chapter 10 separation action was found to be legally sufficient for further processing, and further recommended the issuance of an UOTHC discharge.

12. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 20 February 1997, and directed his reduction to the lowest enlisted grade with the issuance of a UOTHC discharge.

13. The applicant was discharged on 7 March 1997. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by 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 Code 3. He completed 1 year, 2 months, and 10 days of net active service this period.

14. 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.

15. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 18 December 2018, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of the records.

16. The applicant provides the following (provided in entirety for the Board):

a. A letter from the applicant's father and stepmother that detail his mental health issues following his separation from the Army, his personal struggles with criminal behavior, drugs, and incarceration. He was subsequently institutionalized due to his mental health. His family has been working to get his discharge upgraded so that he could receive the proper medical care and treatment through the Veterans Affairs.

b. Medical documents from the South Carolina Department of Mental Health that show he received treatment for serious mental illness.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. The applicant asserts PTSD and other mental health are mitigating factors in 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 Regular Army on 28 December 1995.
- On 20 August 1996, the applicant received non-judicial punishment (NJP) for violating a lawful general regulation by wrongfully drinking underage on or about 25 June 1996; and being disrespectful in deportment toward a noncommissioned officer on or about 25 June 1996.
- On 6 November 1996, the applicant received NJP under Article 15 of the UCMJ, for writing bad checks on 18 separate occasions between on or about 4 June 1996 and on or about 27 June 1996.
- Court-martial charges were preferred against the applicant on 16 January 1997. He was charged with seven specifications of stealing property from another Soldier; one specification of wrongful appropriation a motor vehicle from another Soldier; and one specification of unlawful entry into the barracks room of a Soldier with intent to commit a criminal offense.
- On 7 February 1997, the applicant voluntarily requested discharge under AR 635-200, Chapter 10, in lieu of trial by court-martial. His request was approved.
- The applicant was discharged 7 March 1997, with an UOTHC characterization of service.
- On 18 December 2018, ABCMR denied his request for upgrade.

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, DD Form 293, his ABCMR Record of Proceedings (ROP), DD Form 214, documents from his service record and separation, as well as a letter from his parents, birth certificate and medical documents. 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/his guardian asserts PTSD and other mental health are related to his request for upgrade. Per his application, he attests to having been diagnosed with schizophrenia, and reports other hardships, symptoms, and overall concerns of living with his condition without access to consistent and good medical care. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no mental health records were present. His service record and supporting documents did not contain his service treatment records (STR). However, his separation documents do contain some medical information. On 19 November 1996, the applicant was seen for his separation/chapter medical exam. His results were found to be within normal limits, to include evaluation of psychiatric and neurologic functioning. He completed his separation mental status exam (MSE) on 3 December 1996. The applicant was found to have the mental capacity to understand and participate in the proceedings, met medical retention requirements per AR 40-501 chapter 3, and was cleared to participate in administrative proceedings deemed necessary by command. There were no other medical records made available from his time in service to substantiate the presence of a mitigating mental health condition, nor any mental health condition at all.

e. The applicant submitted a statement on his own behalf during his separation proceedings, stating that he did not steal from other Soldiers and highlighted he was good friends with the person whose items were stolen. However, he admitted that he did pawn some of their personal items, thinking he was doing a favor for another soldier. He knew that he had not been a good Soldier but that he was not a thief. He did not want to experience a court-martial for something he did not do. He asked that his Chapter 10 be accepted. This letter was well written, articulate, clear, and concise. Per the applicant, he did not commit the crime he was accused of, but he was able to acknowledge he had made other poor decisions. This letter suggests the applicant knew the difference between right and wrong. The letter and content also give no indication of a thought disorder and/or psychosis.

f. A letter from his dad and stepmom details his mental health issues following his separation, as well as ongoing struggles with criminal behavior, drugs and incarceration. While this letter helps give context and notes he's "unknowingly been a schizophrenic for more than 20 years," it does not clarify when he was diagnosed nor when psychotic

symptoms began. However, it does appear his mood and presentation began to shift shortly after his discharge though did not become severe until after his prison sentence (year unknown).

g. The applicant and/or his guardian submitted documents from the South Carolina Department of Mental Health that reflect he received treatment for serious mental illness but gave no specific diagnosis and did not specify when he was diagnosed or when his symptoms began. The second page lists a medication he receives injections for, dated 2022. Again, there was no context for diagnosis nor how long he'd been receiving treatment.

h. Per the applicant's VA EHR, he is not service connected. He has not been engaged in any mental health care through the VA and he holds no mental health diagnoses with the VA. However, given the characterization of his discharge, he would not typically be eligible for most VA benefits. Through review of JLV, this applicant did not have any "Community Health Summaries and Documents" available in his EHR.

i. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience at the time of service that could mitigate his discharge.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, PTSD and other mental health are marked as related to the request for upgrade.

(2) Did the condition exist or experience occur during military service? Unclear. The applicant and/or his guardian did not specify if his asserted diagnoses were concerns during his time in service, or after.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence the applicant was diagnosed with a mitigating mental health condition during his time in service. The applicant and his guardian assert he has been diagnosed with schizophrenia, however no medical records were provided to substantiate this diagnosis, nor provide medical history to clarify when his symptoms began and/or when he was diagnosed. As it stands, of the limited records available from his time in service, it appears he was not experiencing any mental health concerns as he was seen, evaluated, and psychiatrically cleared. In addition, his own account (self-authored statement) from the time gives no indication of a diagnosis so severe that his ability to know the difference between right and wrong was impacted.

j. Of note, he has reportedly been diagnosed with schizophrenia, with documentation supporting a severe mental health condition. Individuals with psychotic symptoms may have impaired reality testing, delusional thinking, hallucinations, dysregulation and impaired impulse control. The charges of writing bad checks and larceny/stealing, wrongful appropriation and unlawful entry could be mitigated if there were evidence of this condition from his time in service. Currently there is not. However, per liberal consideration guidelines, his and his guardian's assertion is sufficient to warrant the board's consideration.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board noted the multiple offenses leading to the applicant's separation, the severity of the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. After due consideration of the request, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

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 to amend the decision of the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160008624 on 18 December 2018.



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) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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 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. 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, 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//