

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20230003460

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)
- In-service personnel records
- In-service medical notes

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 was released due to undiagnosed mental illness.
3. On his DD Form 149, the applicant notes other mental health as related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation.
4. The applicant enlisted in the Regular Army on 16 September 1986, for 3 years. Upon completion of training, he was awarded military occupational specialty 11C (Indirect Fire Infantryman). The highest grade he attained was E-3.
5. On 3 November 1987, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 16 November 1987.
6. Court-martial charges were preferred against the applicant on 19 November 1987, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 3 November 1987

until on or about 16 November 1987; failing to go at the time prescribed to his appointed place of duty on or about 18 November 1987; and missing movement of the platoon by design on or about 3 November 1987.

7. On 13 January 1988, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. However, the examining psychiatrist noted that the applicant's clinical psychiatric diagnosis as mixed personality disorder with borderline schizotypal and antisocial personality features.

8. The applicant consulted with legal counsel on or about 19 January 1988, 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, 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 VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He elected to submit a statement in his own behalf; however, the available record is void of his statement.

9. A medical note from Psychiatric Services of Houston, dated 20 January 1988, shows the applicant had been under treatment since the age of 12, and that he suffers from underlying schizophrenia. The psychiatrist noted that he did not support the applicant's decision to enlist in the service, and he did not give his recommendation for his enlistment. This was because, in his judgement, his stability was very tenuous, and he thought that there was high risk that he could decompensate under minimal stress.

10. On 20 January 1988, the applicant's counsel recommended approval of his request for discharge. However, counsel noted that the division psychiatrist, stated in his completed mental evaluation that the applicant's continuing mental problems would qualify him for separation under Army Regulation 635-200, Chapter 5 (Separation for Convenience of the Government), paragraph 13 (Separation because of personality disorder).

11. On 2 February 1988, the separation authority approved the applicant's Chapter 10 discharge and directed his reduction to E-1 with issuance of an UOTHC discharge.

12. The applicant was discharged on 22 February 1988. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3 and 3B. He completed 1 year, 4 months, and 24 days of net active service this period with 13 days of lost time.

13. 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.

14. 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.

15. 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 16 September 1986.
- On 3 November 1987, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 16 November 1987.
- Court-martial charges were preferred against the applicant on 19 November 1987, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 3 November 1987 until on or about 16 November 1987; failing to go at the time prescribed to his appointed place of duty on or about 18 November 1987; and missing movement of the platoon by design on or about 3 November 1987.
- The applicant was discharged on 22 February 1988. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. 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 he was discharge due to an undiagnosed mental illness. He notes other mental health condition as a contributing and mitigating factor in the circumstances that resulted in his separation from military service.

e. The applicant provided medical documentation from his time in service, specifically from the time of his separation. The record show on 13 January 1988, the applicant underwent a Mental Status Evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by command and had the capacity to appreciate the wrongfulness of his conduct. However, the examining psychiatrist noted that the applicant's clinical psychiatric diagnosis as mixed personality disorder with borderline schizotypal and antisocial personality features.

f. A medical note from Psychiatric Services of Houston, dated 20 January 1988, indicates the applicant had been under psychiatric treatment since the age of 12. The psychiatrist noted that he did not support the applicant's decision to enlist in military service, since in his judgement, the applicant's stability was tenuous, and he could decompensate under minimal stress. A letter in support of discharge dated 20 January 1988 indicates the applicant entered military service with a number of diagnosed mental health conditions and had spent three and half years psychiatrically hospitalized. In addition, the Army psychiatrist, stated in his completed mental evaluation that the applicant's continuing mental problems would qualify him for separation under Army Regulation 635-200, Chapter 5 (Separation for Convenience of the Government), paragraph 13 (Separation because of personality disorder). In addition, the psychiatrist stated the applicant's mental health condition played a role in the misconduct he was charged with.

g. Due to the period of service, no active-duty electronic medical records were available for review from the time of service. In addition, no medical documentation post-military service substantiating his assertion of a behavioral health condition, were submitted for review. Applicant is not service connected and there are no VA electronic medical records available for review.

h. After review of all available documentation, it is the opinion of the Agency Behavioral Health Advisor that there is evidence that the applicant had a behavioral health condition during military service that potentially mitigates 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. The applicant contends other mental health condition mitigates his discharge.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts having a BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there is no current medical documentation submitted for review, the available documents indicate the applicant was diagnosed, at the time of his discharge, with what is presently diagnosed as schizotypal personality disorder. This behavioral health condition can lead to severe anxiety and a tendency to avoid social situations, as the person with schizotypal personality disorder tends to hold peculiar beliefs and may have difficulty with responding appropriately to social cues. Given the nexus between schizotypal personality disorder and avoidance, the applicant's AWOL and FTR's are mitigated by his behavioral health condition.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered applicant's contentions, the military record, and regulatory guidance. The Board agreed that the applicant had a pre-existing condition that through no fault of his own, negatively impacted his ability to conform to and maintain standards in accordance with applicable regulatory guidance. The Board considered the applicant's misconduct and agreed that there was a nexus between his diagnosis and the misconduct in which he engaged. After due consideration of the request, the Board determined the evidence presented met the burden of proof in determining an error or injustice and a recommendation for relief is warranted.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending XXXXX showing

- Characterization of Service: Honorable
- Separation Authority: Army Regulation 635-200
- Separation Code: JFF
- Reentry (RE) Code: 1
- Narrative Reason for Separation: Secretarial Authority

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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. 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. 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.

3. 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.

4. 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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval 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.

6. 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.

7. 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//