

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230003827

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Divorce Decree
- Email
- Congressional Letter
- Consent for Release of Personal Records

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 AC98-12661 on 17 December 1998.

2. The applicant states:

a. He proudly gave his life to serve and protect his country and he still loves the United States of America. He was picked on, misused, and abused by the system. He almost had a nervous breakdown until he gave his life to Jesus Christ in 1983. He was never charged and proven guilty with any crime. He begged his commander to send him before anyone for court and a trial. He would not. For years he suffered depression and hatred from a Government that would not even give him a day in court to prove his case. His life changed in 1983. He accepted Jesus Christ and has trained to get a Commercial Driver's License. His application lists post-traumatic stress disorder (PTSD) and other mental health as related to his request.

b. He provides a Consent for Release of Personal Records, dated 22 March 2023, in which he states he was falsely accused, picked out, and discriminated against. He had to deal with racism on a daily basis and he really did not want to say this. Please do

the research. He was kicked out from Fort Campbell, KY, in October 1980. In 1979 there was a Ku Klux Klan rally on Army Gate 4, Army quarters!

3. The applicant enlisted in the Illinois Army National Guard (ARNG) on 24 September 1975. His National Guard Bureau Form 22 shows he served from 24 September 1975 through 12 July 1976. His military occupational specialty (MOS) was 94B (Cook) and later 11B (Infantryman). He was honorably discharged on 13 November 1977.

4. He reenlisted in the ARNG on 14 November 1977 for four years.

5. Orders 202-122, dated 17 October 1979, Headquarters, issued by Fifth U.S. Army, Fort Sam Houston, TX, ordered him to active duty, with a reporting date of 5 December 1979. He was involuntarily ordered to active duty as a result of unsatisfactory participation in unit training assemblies, and assigned to Fort Campbell, KY. He entered active duty on 5 December 1979 in the U.S. Army Reserve.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 14 August 1980. His DD Form 458 (Charge Sheet) shows he was charged with wrongful possession of some amount of marijuana on or about 4 June 1980, wrongful transfer of marijuana on or about 4 June 1980, and wrongfully sell of marijuana on or about 4 June 1980.

7. A Military Police Report, dated 15 August 1980, shows the applicant was found to be in possession of marijuana.

8. The applicant's immediate and intermediate commanders recommended trial by special court martial on 15 August and 19 August 1980.

9. The applicant consulted with legal counsel on 27 August 1980 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 an undesirable discharge; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial. 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 and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. He elected to submit a statement in his own behalf and states he was taken out of his MOS and talked about by his noncommissioned officers. He was having trouble and hardship at home but still his commander did not give enough passes so he could go on pass. He is confused and can't rehabilitate himself since he does not have a (illegible) in the Army. Once he was a very religious man, but he has so much trouble getting back to that way with all this hostility that he feels.

10. A Report of Mental Status Evaluation shows the applicant was evaluated by the Division Mental Health Section on 2 September 1980 on a command referral. He showed no sign of any psychopathology which would warrant medical action. He had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards. The applicant was cleared for any administrative action deemed appropriate by command.

11. A Medical Examination for Separation, Statement of Option shows the applicant desired a separation medical examination on 3 September 1980 and was scheduled for a separation medical examination on 10 September 1980; however, the examination is not available for review.

12. The applicant's commander formally recommended approval of his request for discharge and recommended an UOTHC discharge. His chain of command concurred with the recommendation.

13. The separation authority approved the request for discharge on 5 September 1980 and directed the applicant be discharged UOTHC. He further directed he be reduced to the lowest enlisted grade.

14. The applicant was discharged on 9 September 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, by reason of administrative discharge conduct triable by court martial. He was assigned Separation Code JFS with Reenlistment Code RE-3. His service was characterized as UOTHC. He completed 9 months and 5 days of net active service.

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 Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. The applicant provides a congressional letter that shows he sought congressional assistance.

17. On 20 April 1989, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied the applicant's request for a change in the character and/or reason of his discharge.

18. On 17 December 1998, the ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice and denied his request for upgrade of his discharge.

19. On 7 July 2023, an agency staff member, requested the applicant provide medical documents that support his issue of PTSD. As of 8 August 2023, no response was provided.

20. 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.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous requests for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. The applicant contends PTSD and 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 Illinois Army National Guard (ARNG) on 24 September 1975 and reenlisted in the ARNG on 14 November 1977.
- Orders 202-122, dated 17 October 1979, ordered him to active duty, with a reporting date of 5 December 1979. He was involuntarily ordered to active duty as a result of unsatisfactory participation in unit training assemblies, and assigned to Fort Campbell, KY. He entered active duty on 5 December 1979 in the U.S. Army Reserve.
- Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 14 August 1980. His DD Form 458 (Charge Sheet) shows he was charged with wrongful possession of some amount of marijuana on or about 4 June 1980, wrongful transfer of marijuana on or about 4 June 1980, and wrongful sell of marijuana on or about 4 June 1980.
- After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial.
- Applicant was discharged on 9 September 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the

provisions of AR 635-200, Chapter 10, by reason of administrative discharge conduct triable by court martial. He was assigned Separation Code JFS with Reenlistment Code RE-3. His service was characterized as UOTHC.

c. 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, self-authored statement, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. 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 in a self-authored statement that he was singled out by his superior who repeatedly targeted him for verbal abuse. "While I thank God that he never carried out his threat to physically harm me, he never-the-less began a relentless campaign to intimidate and harass me without ceasing. He would constantly call me out for extra duty, working me over time, and threaten to 'lock me up.' It became a daily grind of all kinds of charges that he brought against me. Yet, I was never imprisoned, convicted, sentenced, or charged with anything. He did it as part of his harassing behavior against me." When he saw that I would not break under the weight of his constant deriding and harassment towards me, things finally turned for the worse. After months and months of this abuse, in October 1979, the Captain called me to his office and said he was letting me out. Confused and dismayed, I asked him why I was being discharged and he stated that I was unfit, yet there was nothing in my record to substantiate his charge. I told him that I refused to quit the Army, especially without the benefits that would be due to me. He responded, in these exact words, which I have never forgotten, "Jamison you will get your discharge papers in 30 days." Six weeks later, I was given my DD214 with the notation, "Discharged Under Other Than Honorable."

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted a Mental Status Evaluation showing he was assessed on 2 September 1980 on a command referral. He showed no sign of any psychopathology which would warrant medical action. He had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards. The applicant was cleared for any administrative action deemed appropriate by command.

f. No VA electronic medical record was available for review and the applicant is not service connected. On 7 July 2023, an agency staff member, requested the applicant provide medical documents that support his contention of PTSD; no response was provided. No medical documentation of any mental health condition/diagnosis was

evidenced in the record and the applicant did not submit any documentation indicating a diagnosis.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis that mitigates 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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserts PTSD and other mental health condition on his application.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD and other mental health condition, the applicant did not submit any medical documentation substantiating his claim. Regardless of medical documentation, it is unlikely that a BH condition would mitigate his sell of marijuana.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence 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 on consideration of discharge upgrade requests. The Board noted the multiple offenses leading to the applicant's separation. Documentation shows he was afforded counsel and voluntarily requested discharge for the good of the service in accordance with applicable regulatory guidance. After due consideration of the case, Based on the preponderance of the evidence, and in the absence of mitigating factors such as post service accomplishments or letters of reference, the Board found that 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 to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC98-12661 on 17 December 1998.

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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 10, 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.
2. AR 635-200 sets forth 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

3. 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 Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

4. 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//