

promoted during advanced individual training, earned his wings in jump school, and attended baking school to improve his skills. He routinely received excellent ratings.

b. Although he did not see combat, his service was not without its traumatic experiences. A fellow Soldier, who was also a friend, was crushed by an amphibious off-road vehicle, and he witnessed an incident during marksmanship training which resulted in two Soldiers being accidentally shot and killed on the firing range.

c. His separation unfairly misrepresents his commendable service. He continued to support his high school sweetheart after enlisting in the Army. During a period of approved leave in 1975, he returned home to find out she had found someone else. The news was devastating, as he was planning to propose to her. He fell into a deep depression.

d. Shortly after the breakup, he went absent without leave (AWOL). His intent was to find her and confront her. He was distraught and had no one to talk to about his situation. He began to use alcohol to cope with his deep depression. He took a temporary job pumping gas, and his life was put on hold while trying to cope with his loss. He did not understand that leaving the Army in this manner violated his obligation to the service. He was contacted by military personnel in July 1976 and immediately returned to Fort Bragg, NC.

e. Just wanting the situation to be over, he agreed to the discharge which was offered. He had not come to terms with the personal issues that impacted his life. He did not seek counsel from friends, family, or peers. Nor did he disclose how he was feeling. He was simply trying to move on with his life.

f. Since leaving the Army, he has been with his wife for over 41 years and has two children and three grandchildren. He is a productive member of the workforce and a homeowner. He is proud of his service. His departure was due to personal issues which led to undiagnosed clinical depression. He is asking for an upgrade so he can receive support for medical issues.

3. Counsel states, in effect:

a. The U.S. Army failed to follow proper court-martial procedures by giving notice to the next of kin for a Soldier under the age of 21 years or providing compelling reason as to why the Chaplain should not have provided such notification.

b. The U.S. Army failed to recognize the applicant did not understand he was violating his military duties because of a combination of undiagnosed cognitive difficulties and youth.

c. The applicant's discharge was inequitable due to the failed diagnosis of acute depression which should excuse his conduct.

d. The U.S. Army failed to recognize the applicant's laudable record, prior to his depressive episode, when considering his UOTHC discharge.

4. After a period of delayed entry in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 29 April 1974 for a 3-year period. Upon completion of his initial entry training, he was awarded military occupational specialty 94B (Food Service Specialist). The highest rank he attained was specialist four/E-4.

5. The applicant was awarded an accelerated enlistment from private/E-1 to E-2 upon completion of basic combat training for his dedicated efforts and exemplary conduct and attitude. Additionally, he received a Certificate of Proficiency as an Honor Graduate from Advanced Individual Training on 16 August 1974.

6. Special Orders Number 260, issued by Headquarters, U.S. Army Infantry Center, Fort Benning, GA, dated 17 September 1974, shows the applicant was awarded the Parachute Badge.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 23 February 1976 for two occasions of failing to go at the time prescribed to his appointed place of duty, on or about 17 February 1976. His punishment consisted of forfeiture of \$75.00, reduction to private first class/E-3, and 14 days of extra duty.

8. Special Order Number 47, issued by Headquarters, 82nd Airborne Division, Fort Bragg, NC, dated 6 March 1976, shows the applicant's parachute badge was revoked under the provisions of Army Regulation 672-5-1 (Decorations, Awards, and Honors – Military Awards), paragraph 1-29c (2).

9. Special Orders Number 55, issued by Headquarters, 82nd Airborne Division, Fort Bragg, NC, shows the applicant was a deliberate terminnee. He was reassigned from HSB, 1st Battalion, 319th Field Artillery, Fort Bragg, NC, to the 28th Combat Support Hospital, Fort Bragg, NC.

10. Two DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL on 29 March 1976
- AWOL to Dropped from Unit Rolls (DFR) on 27 April 1976

11. A DD Form 458 (Charge Sheet), dated 3 May 1976, shows the applicant was charged with AWOL from on or about 29 March 1976 and he continued to remain AWOL at the time the Charge Sheet was initiated.

12. The applicant surrendered to military authorities and was returned to military control at Fort Bragg, NC, on 21 July 1976.

13. Court-martial charges were preferred against the applicant on 22 July 1976. The updated DD Form 358 shows he was charged with being AWOL from on or about 29 March 1976 through on or about 21 July 1976.

14. The applicant was interviewed by the Chaplain, in accordance with Army Regulation 600-40 (Personnel – General – Apprehension, Restraint, and Release to Civil Authorities), paragraph 5, on 27 July 1976, approximately a week and a half prior to his 21st birthday. The purpose of the interview was to counsel the applicant and advise him to notify his next of kin of the court-martial charges against him, or in the alternative, to authorize the Chaplain to communicate directly with the next of kin, or to state reasons why notification should not be made. The following notations are marked on the Chaplain's interview record:

a. Item 3a – 3e, pertaining to the accused, if under the age of 21, are unmarked.

a. Item 4a – The accused being over the age of 21, is asked: Have you notified your next of kin concerning the charge against you? The "NO" box is checked.

b. Item 4b – The accused being over the age of 21, is asked: Will you notify your next of kin concerning the charges against you? The "YES" box is checked.

c. Item 4c - The accused being over the age of 21, is asked: Do you wish the Chaplain to notify your next of kin concerning the charge against you? The "YES" and "NO" boxes are blank.

d. [The applicant] and the Chaplain both signed the document, verifying the information was true and correct.

15. The applicant consulted with legal counsel on 28 July 1976.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. 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 acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He elected to submit a statement in his own behalf, wherein he stated, he clearly understood he might be able to get a discharge because of his “personal beliefs,” but he would rather accept a “Chapter 10” even though he would probably receive an undesirable discharge.

16. The applicant underwent a mental health evaluation on 28 July 1976. The evaluating provider noted the applicant’s behavior was normal. He was fully alert and fully oriented with a level mood. His thinking process was clear with normal thought content. There was no impression of significant mental illness. The applicant was mentally responsible, able to distinguish right from wrong and to adhere to the right. He had the mental capacity to understand and participate in board proceedings.

17. The applicant underwent a pre-separation medical evaluation on 28 July 1976. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show that the applicant reported being in good health with no significant history. He was deemed physically qualified for separation.

18. On 30 July 1976, the applicant's immediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate). The commander stated the applicant had been a poor morale factor in the unit, and his duty performance had been substandard.

19. On 4 August 1976, the intermediate commander recommended approval of the request for discharge, further stating the applicant’s lengthy AWOL was due to disenchantment with military service.

20. On 8 September 1976, the Staff Judge Advocate (SJA) reviewed the applicant’s request for discharge. The SJA noted the applicant was counseled by the brigade commander and Captain [REDACTED] legally qualified counsel. He fully understood the consequences of his request. The SJA determined rehabilitation was unlikely and

punishment would have little, if any, ultimate benefit. The SJA further recommended approval of the request for discharge.

21. The separation authority approved the applicant's request for discharge on 9 September 1976. He directed the applicant be reduced to the lowest enlisted grade and the issuance of an Undesirable Discharge Certificate.

22. Accordingly, the applicant was discharged on 15 October 1976, under the provisions of Army Regulation 635-200, Chapter 10, by reason of for the good of the service - in lieu of trial by court-martial. His DD Form 214 (Report of Separation from Active Duty) confirms his service was characterized as UOTHC. He was credited with 2 years, 1 month, and 25 days of net active service, with 112 days of lost time.

23. The applicant provides the following:

a. A signed letter, dated 24 May 2021, shows the applicant retained the legal services of [REDACTED] and co-counsel [REDACTED] in connection with his request for an upgrade of his characterization of service.

b. 130 pages of military service records as detailed in the Record of Proceedings (ROP) above, in pertinent part.

c. A Report of Cognitive and Psychosocial Assessment, dated 12 July 2022, shows the applicant underwent a comprehensive evaluation on 2 May 2022 and 3 May 2022 to determine whether any service-connected mental health conditions could be responsible for the misconduct which led to his discharge. The findings of the assessment will be further outlined in the "MEDICAL REVIEW" section of this ROP.

d. The Kurta and Wilkie Memoranda provide clarifying guidance to Military Discharge Review Boards and Boards for the Correction of Military Records on liberal consideration and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, post-traumatic stress disorder (PTSD), and traumatic brain injury.

e. A letter from the VA, dated 11 September 1976, shows the applicant was granted a hearing in connection with his claim for VA benefits. The applicant provided two statements in support of his claim, wherein he stated, in effect, he was the only squad leader to receive outstanding honors in advanced individual training. He gained rank very quickly. He liked his job in the kitchen at Fort Bragg. He had plans to get married. When he went home to find she had met someone else, it took something out of him. It was hard to cope. He began drinking and had thoughts of killing himself. He went AWOL to plead with her not to leave. A lot of this led to his discharge. He was not thinking about the future when he accepted his discharge.

f. VA Hearing Transcripts, dated 7 February 1997, show the applicant attended a hearing at the VA Regional Office in [REDACTED] on 28 October 1996, to provide testimony regarding his character of discharge for VA purposes. In his testimony, the applicant states, in effect, he loved the Army. It took him less than two years to become a specialist/E-4. He went AWOL to try to get his girl back. He was not thinking about the consequences. He reported back to his unit after someone dropped off a card saying they were looking for him. He signed paperwork requesting a discharge, but he did not fully understand what the consequences would be later in life.

g. Two letters from the VA, dated 9 January 2019 and 21 March 2019, show the applicant's period of service from 29 April 1974 to 15 October 1976 is not considered honorable for VA purposes. He and his dependents are not considered eligible for VA benefits. However, the applicant would be entitled to health care benefits for any disability determined to be service connected during his active period of service.

24. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

25. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

26. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced a mental health condition which mitigated his misconduct.

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 in the Regular Army on 29 April 1974; 2) Court-martial charges were preferred against the applicant on 22 July 1976 for being AWOL from 29 March 1976-21 July 1976; 3) On 15 October 1976, Chapter 10, by reason of for the good of the service - in lieu of trial by court-martial. His service was characterized as UOTHC.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted mental health conditions as contributing and mitigating factors in the circumstances that resulted in his separation. He reported experiencing depression as the result of a romantic relationship ending. There was insufficient

evidence the applicant reported mental health symptoms while on active service. The applicant underwent a mental health evaluation on 28 July 1976 as part of his separation proceedings. He was not diagnosed with a mental health condition and was cleared to participate in board proceedings. A review of JLV was void of medical documentation. The applicant has not been diagnosed with a service-connected mental health condition and receives no service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing depression that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing depression while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a depression while on active service. The applicant did go AWOL, which can be a sequela to depression, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's behavioral health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided only self-reported evidence of post-service achievements with no corroborating documentation. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a behavioral health condition. Based on a preponderance of the evidence, the Board determined 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 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.

4/24/2024

X _____

CHAIRPERSON

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, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. The regulation provides the ABCMR may, in its discretion, hold a hearing. 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 600-40, in effect at the time, provides supplemental conditions and procedures concerning the apprehension and restraint of persons subject to the Uniform Code of Military Justice. Paragraph 5 provides for the notification of the next of kin when trial by court-martial or foreign civilian court appears probable. The regulation states, in pertinent part:

a. A chaplain will counsel the offender to advise his parents, spouse or guardian of the circumstances or the offender can authorize the chaplain to communicate directly with these individuals. If the enlisted person refuses to do either and he is 21 years of age, the refusal and the name of the officer receiving the refusal will be recorded in the offender's personnel file.

b. When the enlisted person is under 21 years of age, and he refuses to inform his parents, spouse, or guardian, the chaplain will, unless there is compelling reason to the contrary, inform them by letter or other communication of the details he considers pertinent and proper under the circumstances.

5. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

6. Army Regulation 672-5-1, provides policy, criteria, and administrative instructions concerning individual military decorations, service medals, service ribbons, combat and special skills badges, tabs, and unit decorations. Paragraph 1-29c (2), in effect at the time, provides that a parachutist badge may be revoked under the following conditions:

a. When the awardee is convicted by court-martial for refusal to participate in a parachute jump.

b. When the awardee initiates, in his initial tour of airborne duty, action which results in termination of his airborne status prior to his completion of 18 consecutive months of airborne duty.

7. 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 Discharge Review Boards (DRB) and 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 post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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.

8. 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//