

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230004553

APPLICANT REQUESTS: a reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable, and a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 15 February 2023
- Associate of Arts Degree, May 2007
- Associate of Applied Science Degree, April 2010
- Bachelor of Ministry Degree, January 2014
- Master of Biblical Studies Degree, April 2015
- Doctor of Theology Degree, June 2016
- Doctor of Philosophy Degree, April 2022
- approximately 100 certificates of completion, awards, commencement, training, and appreciation

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 AR20190009077 on 7 October 2019.
2. The applicant states, in effect, he believes due to the loss of his mother, he was not in a good mental state. When she passed, he was serving and only 18 years old, he did not take it well. He did not have any siblings nor a father in his life and this made him unstable. He regrets hindering his service. On his DD Form 149, the applicant notes other mental health is related to his request.
3. The applicant enlisted in the Regular Army on 21 October 1993, for a period of 3 years. His DA Form 2-1 (Personnel Qualification Record) shows the highest rank he obtained was Private First Class (PFC)/E-3 with a date of rank of 21 January 1994.
4. A DD Form 458 (Charge Sheet) shows the applicant was charged with the following court-martial charges:

- one specification of larceny of various items
- one specification of housebreaking
- four specifications of failure to go at the time prescribed to his appointed place of duty

7. DD Form 2329 (Record of Trial by Summary Court-Martial) shows on 23 February 1995, the applicant was found guilty of the following charge(s) and specification(s):

a. Charge I: Article 121 (Larceny); Specification - Larceny of private property in excess of \$100.00

b. Charge II: Article 130 (Housebreaking); Specification - Housebreaking

c. Charge II: Article 86 (Failure to repair); Specification(s):

- (1) Failure to go to appointed place of duty at 0600 hours, 4 January 1995
- (2) Failure to go to appointed place of duty at 0600 hours, 9 January 1995
- (3) Failure to go to appointed place of duty at 0600 hours, 13 February 1995
- (4) Failure to go to appointed place of duty at 0900 hours, 14 February 1995

8. The result of trial memorandum, dated 24 February 1995, shows he was found guilty of larceny, housebreaking, and four offenses of failure to repair. He was sentenced to reduction to Private/E-1, forfeiture of \$569.00 pay for one month, and confinement for 30 days. The sentence was approved on 1 March 1995.

9. On 3 April 1995, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). He noted the applicant was convicted by summary court-martial for theft, housebreaking, and four counts of failing to be at his appointed place of duty. Additionally, he was caught on 27 March 1995 shoplifting from the main exchange.

10. The applicant consulted with counsel on 3 April 1995 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration of his case by an administrative separation board, an appearance before a board, and representation by counsel. He elected not to submit a statement in his own behalf. Additionally, he understood he may encounter prejudice in civilian life.

11. On 4 April 1995, the applicant's immediate and intermediate commander recommended separation under AR 635-200, paragraph 14-12c, commission of a serious offense, with an other than honorable discharge issued.

12. On 13 May 1995 the separation authority approved the recommended separation under the provisions of AR 635-200, paragraph 14-12c, commission of a serious offense, and further directed an UOTHC discharge be furnished.

13. The applicant was discharged on 19 May 1995, under the provisions of AR 635-200, paragraph 14-12c(1), by reason of misconduct, in the grade of E-1. His service was characterized as UOTHC. He received separation code "JKF" and reentry code of "3". He completed 1 year, 6 months, and 6 days of net active service. He had time lost from 23 February 1995 to 17 March 1995.

14. The applicant provides, an Associate of Arts Degree, Associate of Applied Science Degree, Bachelor of Ministry Degree, Master of Biblical Studies Degree, Doctor of Theology Degree, and Doctor of Philosophy Degree, along with approximately 100 certificates ranging from certificate of completion, achievement, perfect attendance, and various course completion certificates.

15. On 17 October 2019, the ABCMR considered the applicant's request for an upgrade of his characterization of service, the Board denied his request stating they found no in-service mitigation factors for the misconduct and no evidence of post-service achievements or letters of reference in support of a clemency determination.

16. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

17. The applicant provided argument or evidence the Board should consider, along with the applicant's overall record, in accordance with the published equity, injustice, or clemency determination guidance

18. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable. The applicant asserts that other mental health is related to his request for upgrade.

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:

- He enlisted in the Regular Army on 21 October 1993.

- A DD Form 458 (Charge Sheet) shows the applicant was charged with the following charges: larceny, housebreaking and failure to go at the time prescribed to his appointed place of duty.
- DD Form 2329 (Record of Trial by Summary Court-Martial) shows on 23 February 1995, the applicant was found guilty of the following charge(s) and specification(s):
- Charge I: Article 121 (Larceny); Specification - Larceny of private property in excess of \$100.00
- Charge II: Article 130 (Housebreaking); Specification – Housebreaking
- Charge II: Article 86 (Failure to repair); Specification(s): Failure to go to appointed place of duty at 0600 hours on 4 January 1995, on 9 January 1995, on 13 February 1995, and on 14 February 1995.
- On 3 April 1995, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of AR 635-200, paragraph 14-12c. He noted the applicant was convicted by summary court-martial for theft, housebreaking, and four counts of failing to be at his appointed place of duty. Additionally, he was caught on 27 March 1995 shoplifting from the main exchange.
- The applicant was discharged on 19 May 1995 under AR 635-200, paragraph 14-12c(1), by reason of misconduct. His service was characterized as UOTHC.
- On 17 October 2019, the 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, his ABCMR Record of Proceedings (ROP), DD Form 214, his service and separation records, as well as copies of several degrees, to include associates through doctoral degrees and over 100 certificates of completion, awards, commencement, training and appreciation. 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 asserted that other mental health is related to his request for upgrade. More specifically, the applicant asserted that "because of the loss of my mother, I was not in a good mental state." He noted that she passed away while he was serving and he didn't take it well, he was not stable, and this hindered his service.

e. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting

documents did not contain his service treatment records (STR) and no other records were provided to substantiate his claim.

f. 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 for consideration. There are numerous letters and certificates from 2021 and 2022 that show he participated in a 12-course behavioral health treatment curriculum known as Moral Reconciliation Therapy (MRT), likely while in prison. There is no indication of any diagnosis, and the courses seemed to focus on coping skills building.

g. The applicant did share over 100 supporting documents that show his dedication to education, through earning an associate's, bachelor's, master's and two doctoral degrees as well as numerous trainings and continuing education. The applicant has focused on religious studies as well as religious counseling. There was no further context provided by the applicant to understand this path and how it relates to his previous service, loss, and legal charges. It does appear that at least some of his studies and participation took place from prison.

h. 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 potentially mitigating condition during his time in services. Regardless, there is no nexus between his charges and typical concerns secondary to the loss of a parent.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, applicant asserts other mental health as a mitigating factor.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts a potentially mitigating condition occurred during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts other mental health is related to his request for upgrade. However, the applicant never specified a mental health condition. It appears that he is asserting the loss of his mother caused him mental instability while he was in the service, presumably secondary to grief. First, there is no evidence the applicant was diagnosed with any mental health condition. Second, the loss of a family member and grief is not typically considered a mitigating condition or experience. That said, there is no nexus between larceny, housebreaking or shoplifting and grief and loss. There continues to be

no nexus even if his grief had developed into depression or acute stress. Failure to repair or report is an avoidance behavior consistent with several mental health conditions, but again, there is no evidence the applicant has ever held a mental health diagnosis. That said, per Liberal Consideration guidance, his contention is sufficient for 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 of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged from active duty due to misconduct (convicted by summary court-martial for theft, housebreaking, and four counts of failing to be at his appointed place of duty and was caught shoplifting from the main exchange). The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination; however, his post service achievements do not outweigh the serious misconduct for which he was discharged. Based on a preponderance of evidence, the Board determined 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 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 ABCMR set forth in Docket AR20190009077 on 7 October



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 Army Review Boards Agency (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. 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. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

(2) Paragraph 3-7b states 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.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) 14-12c – Soldiers are subject to discharge for *Commission of a serious offense*. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol



(2) A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority.

4. 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. 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.

5. 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//