

IN THE CASE OF: ██████████

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230004740

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 March 1989
- Family Health Center West Market Subject: Letter of Diagnosis, 23 February 2023

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code, section 1552(b), however, the Army Board of Correction of Military Records (ABCMR) conducted a substantive review of his case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he is need of medical and home support related to his medical conditions. Additionally, his application to the Board notes his request is related to post traumatic stress disorder (PTSD) and other mental health issues.
3. The applicant enlisted in the Regular Army on 6 October 1981.
4. Three DA Forms 4187 (Personnel Action) dated 21 October 1984 and 20-21 November 1988 show the applicant was in an assigned not joined status when he went absent without leave (AWOL) from his unit on or about 21 October 1984. He was dropped from the rolls on 20 November 1984 and was returned to attached/present for duty on 21 November 1988.
5. The applicant signed an admission of AWOL, on an unspecified date, wherein he knowingly, willingly, and voluntarily declared he was AWOL from 21 October 1984 to 21 November 1988.

6. On 21 November 1988 the applicant declined to undergo a medical examination prior to his separation.

7. His DD Form 458 (Charge Sheet) dated 23 November 1988 shows the applicant did on or about 21 October 1984 without authority absent himself from his organization located at Fort Sill, OK, and did remain so absent until on or about 21 November 1988.

8. On 23 November 1988, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a discharge for the Good of the Service if this request is approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service. In his request, he acknowledged:

a. He understood that submitting this request for discharge he acknowledge that he is guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

b. He had been advised and understood the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he would be deprived of many or all Army benefits that he may be ineligible for many or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

c. He also understood that once his request for discharge was submitted, it may be withdrawn only with consent of the commander exercising court-martial authority, or without that commander's consent, in the event trial results in an acquittal or the sentence does not include a punitive discharge even though the courts could have adjudged one.

d. He was advised he could submit any statements he desired in his behalf; he elected not to provide a statement.

9. On 25 January 1989, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Other Than Honorable Conditions Discharge Certificate.

10. On 9 February 1989, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an Other Than Honorable Conditions Discharge Certificate and the applicant's reduction to private/E-1.

11. The applicant was discharged on 23 March 1989, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under other than honorable conditions, and he was credited with 4 years, 4 months, and 18 days of net active service, with one period of lost time from 21 October 1985 to 20 November 1988 and one period of excess leave from 23 November 1988 to 23 March 1989.

12. The application provides a letter dated 17 February 2023 from the Family Health Centers of [REDACTED] which show the applicant has been diagnosed with and is being treated for the early onset of Alzheimer's and chronic PTSD. He would benefit from home help services for activities of daily living and other in-home care.

13. Regulatory guidance in effect at the time provided that a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

14. The Board should consider the applicant's petition and his service in accordance with the published equity, injustice, or clemency determination guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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 Army Reserve on 6 October 1981
- Three DA Forms 4187 (Personnel Action) dated 21 October 1984 and 20-21 November 1988 show the applicant was in an assigned not joined status when he went absent without leave (AWOL), from his unit on or about 21 October 1984. He was dropped from the rolls on 20 November 1984 and was returned to attached/present for duty on 21 November 1988.
- The applicant signed an admission of AWOL, on an unspecified date, wherein he knowingly, willingly, and voluntarily declared he was AWOL from 21 October 1984 to 21 November 1988.
- On 21 November 1988 the applicant declined to undergo a medical examination prior to his separation.
- Applicant was discharged on 23 March 1989, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of court-martial.

His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under other than honorable conditions.

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 214, ABCMR Record of Proceedings (ROP), letter of diagnosis dated 23 February 2023, 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 needs medical and home support related to his medical conditions. Additionally, his application to the Board notes his request is related to post traumatic stress disorder (PTSD) and other mental health issues.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from his time of service evidencing a behavioral health condition. No VA electronic medical records were available for review and the applicant is not service connected. The applicant submitted a letter of diagnosis from a civilian provider, Family Health Center [REDACTED], dated 23 February 2023. The letter indicates the applicant has been diagnosed with and is being treated for early-onset Alzheimer's and chronic PTSD and would benefit from services to help in the home with ADLs and other in-home care. However, there is no indication his PTSD is related to his military service. In addition, his diagnosis of early-onset Alzheimer's, a neurodegenerative condition, is unrelated to his military service and would not have been present during his time of discharge.

f. 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 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 checked having a BH condition on his application.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserted PTSD and Other Mental Health as related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH conditions during the applicant's time in-service. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant submitted

a letter of diagnosis from a civilian provider, dated 23 February 2023, indicating the applicant has been diagnosed with and is being treated for early-onset Alzheimer's and chronic PTSD. However, there is no indication his PTSD is related to military service and his diagnosis of early-onset Alzheimer's, a neurodegenerative condition, is unrelated to his military service and would not have been present during his time of discharge.

**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 mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. 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 mental 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:**

| <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 for correction of the records of the individual concerned.

2/27/2024

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, 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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 states 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. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

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.

3. Army Regulation 635-5 (Separation Documents), prescribes the policies and procedures for completing the DD Form 214, to include the following instructions for completing item 18: enter a list of enlistment periods for which a DD Form 214 was not previously issued; for example, "Immediate reenlistments this period: 761210-791001."

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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.

5. Section 1556 of Title 10, United States 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.

//NOTHING FOLLOWS//