

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 November 2023

DOCKET NUMBER: AR20230004791

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge. 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)

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 his discharge was unjust, he was not afforded due process, his conduct while serving was not willful and persistent. His unauthorized absence was not in excess of 90 days. He has been precluded from Veterans Administration (VA) benefits because of the character of his discharge. He tried to seek relief from the appeals board of veterans. He does not have additional remarks or information at this time but reserves the right to supplement the record. The issue/condition related to his request is post-traumatic stress disorder (PTSD).
3. The applicant enlisted in the Regular Army on 13 November 1979 for three years. His military occupational specialty was 11C (Indirect Fire Infantryman).
4. The applicant was absent without leave (AWOL) on 6 May 1981 and dropped from the rolls on 5 June 1981.
5. Court-martial charges were preferred against the applicant on 11 June 1981 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 6 May 1981 and did remain so absent.

6. He surrendered to military authorities and was returned to military control and present for duty on 25 August 1981.
7. An updated DD Form 458 shows court-martial charges were preferred against the applicant on 27 August 1981 for violations of the UCMJ. He was charged with AWOL on or about 5 May 1981 until on or about 25 August 1981.
8. A Report of Mental Status Evaluation, dated 28 August 1981, shows the applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible. He was AWOL 90 days due to family problems.
9. The applicant consulted with legal counsel on 28 August 1981 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 UOTHC 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 Personnel), Chapter 10, for the good of the service-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 VA, 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 not to submit statements in his own behalf.
10. The applicant's commander recommended approval of his request for discharge in lieu of trial by court martial. The commander noted, in his opinion, the applicant had no motivation for continued service and would not respond to either counseling or rehabilitation. There did not appear to be any reasonable grounds to believe that the applicant is or was at the time of his misconduct mentally defective, deranged, or abnormal. His chain of command recommended approval.
11. The separation authority memorandum is not available for review. However, Orders 260-86, dated 17 September 1981, U.S. Army Training Center, Fort Dix, NJ reassigned the applicant for separation processing and discharge.
12. The applicant was discharged on 24 September 1981. 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, for administrative discharge conduct triable by court martial. He was assigned Separation Code JFS with Reenlistment Code 3 and

3B. His service was characterized as UOTHC. He completed 1 year, 6 months, and 23 days of net active service. He lost time from 6 May 1981 to 24 August 1981.

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

14. On 30 May 1984, the Army Discharge Review Board determined the applicant was properly and equitably discharge and denied his request for a change in the character and/or reason of his discharge.

15. On 19 May 2023, an agency staff member, requested the applicant provide medical documents that support his issue of PTSD. As of 25 June 2023, no response was provided.

16. 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.

17. MEDICAL REVIEW:

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

- Applicant enlisted into the Regular Army on 13 November 1979.
- Court-martial charges were preferred against the applicant on 11 June 1981 for being AWOL on or about 6 May 1981 and did remain so absent. He surrendered to military authorities and was returned to military control and present for duty on 25 August 1981. The charges were updated to reflect that he was AWOL from 5 May 1981 to 25 August 1981.
- On 28 August 1981, the applicant requested discharge under AR 635-200, Chapter 10, in lieu of trail by court martial. His request was approved.
- The applicant was discharged on 24 September 1981 with an Under Other Than Honorable Conditions discharge.
- On 30 May 1984 ADRB 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, as well as 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 indicated that PTSD is related to his request for an upgrade. He stated that his discharge was unjust, and he was not afforded due process. 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), however the applicant did engage in a mental status exam (MSE) on 28 August 1981, as part of his separation process. The applicant's presentation and overall assessment was unremarkable. The applicant was found to have the mental capacity to understand and participate in the proceedings and was mentally responsible. The record also noted that he had been AWOL 90 days due to family problems. A Personnel Control Interview from 27 August 1981 was also available in his record, and indicated the applicant was having personal issues. He noted his wife left him, and it appears this caused significant financial concerns to include him not having the money to pay for rent, utilities or food. No other documentation was provided to substantiate his assertion of PTSD contributing to his misconduct.

e. Per the applicant's VA EHR, he is not service connected, he holds no mental health disorder diagnose, and he has had no engagement 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. No other medical records were provided.

f. 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 condition or experience at the time of service that mitigated 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 asserts PTSD is related to his request.

(2) Did the condition exist or experience occur during military service? Unknown, the applicant did not specify when he experienced PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant asserts mitigation due to PTSD and Per Liberal Consideration, his contention is sufficient to warrant the board's consideration. However, no further details were given about how PTSD relates to his request. The applicant's service record shows he did report experiencing family problems at the time of his misconduct. Though, there is no evidence that the applicant was experiencing a mitigating condition on active service, nor since his discharge. The applicant did go AWOL, and there can be a nexus between this behavior and PTSD, but this is not sufficient to establish a history of a condition during service.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance 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 before the Board 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 not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for upgrade requests. The Board considered the severity of the misconduct and relative applicability of documentation for consideration as mitigating circumstances for the misconduct. The Board found insufficient evidence of in-service mitigating factors for the misconduct and documentation provided by the applicant did not reveal a diagnosis of PTSD, post-service accomplishments or letters of support for consideration by the Board. After due consideration of the case, 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 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 for correction of the records of the individual concerned.

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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. Title 10, U.S. Code, Section 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.

3. 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 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.

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 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.

5. 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//