

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005184

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or an honorable discharge. Additionally, he requests correction of his Social Security Number (SSN).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 upgrade of his discharge to general or honorable due to mitigating factors/life events at the time of discharge. Overwhelming life events at the time include hurricane Camille and he thought his parents died, divorce papers that beat him to Germany, and he had a baby girl that he hadn't seen. Since he left the military, he has been distressed over this event. He was a good Soldier and made a youthful error. He has become a wonderful father and grandfather and retired after 40 plus years as an over the road driver. As he gets older, he wishes to be at least respectfully recognized for his service. On his DD Form 149, he notes other mental health is related to his request. In his statement he asks that his case review be expedited as he has been diagnosed with ascending aortic aneurism and is facing a potential diagnosis of metastatic cancer of the lung.

3. The applicant enlisted in the Regular Army on 10 August 1967 for three years. His military occupational specialty was 76A (Supply Clerk).

4. Before a special court martial at Fort Belvoir, VA on or about 19 September 1968 the applicant was found guilty of being absent without leave (AWOL) on or about 11 June 1968 to on or about 26 June 1968 and from on or about 27 June 1968 to on or about

11 August 1968. The court sentenced him to reduction to private/E-1, forfeiture \$46.00 per month for 3 months, and confinement at hard labor for 3 months. The sentence was approved on 30 September 1968.

5. Special Court Martial Order 143, dated 18 October 1968, Headquarters, U.S. Army Engineer Center, Fort Belvoir, VA set aside the sentence of special court marital order approved on 30 September 1968. All rights, privileges, and property of which the applicant had been deprived by virtue of that portion of the sentence so set aside would be restored.

6. Special Court Martial Order 98, dated 4 November 1968, Headquarters, U.S. Army Engineer Center, Fort Belvoir, suspended three months of the unexecuted portion of the approved sentence to confinement at hard labor for three months.

7. The applicant served in Germany from 8 January 1969 through 20 July 1969.

8. The applicant was AWOL from 30 September 1969 to 30 December 1969 and from 17 January 1970 to 18 January 1970.

9. The Report of Medical Examination, dated 7 April 1970, shows "there was no reasonable grounds for belief that the applicant was or ever had been mentally defective, deranged, or abnormal. A psychiatric examination was not deemed to be appropriate."

10. A Charge Sheet is not available for review; however, the Report of Investigation, dated 8 April 1970, shows the commander determined that the charge was substantiated by competent evidence. The maximum punishment for this offense was a dishonorable discharge, total forfeiture of all pay and allowances, and confinement at hard labor for one year.

11. A Statement of Medical Condition shows there had been no change in the applicant's medical condition since his last separation examination on 17 April 1970.

12. The applicant was discharged on 24 April 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Paragraph 10, for the good of the service-in lieu of trial by court-martial. He was assigned Special Program Number 246 (for the good of the service) with Reenlistment Code 3B and 4. His service was characterized as UOTHC. He completed 2 years of net active service.

13. The applicant was charged due to the commission of an offense punishable under the Uniform Code of Military Justice with a punitive discharge. Subsequent to being

charged, he would have consulted with counsel and requested discharge under the provisions of Paragraph 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. Regarding the applicant's request for a correction of his SSN; his DD Form 214 shows his last four as 4X91 instead of 4X97. The applicant did not provide any documentation to support his request for correction of his SSN.

15. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. The information entered thereon reflects the conditions as they existed at the time of separation.

16. On 16 June 2023, a staff member at ARBA, requested the applicant provide medical documents that support his mental health issue. As of 16 July 2023, no response was provided.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or an honorable discharge. The applicant indicated other mental health as being 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:

- The applicant enlisted in the Regular Army on 10 August 1967.
- Before a special court martial at Fort Belvoir, VA on or about 19 September 1968 the applicant was found guilty of being absent without leave (AWOL) on or about 11 June 1968 to on or about 26 June 1968 and from on or about 27 June 1968 to on or about 11 August 1968.
- The applicant served in Germany from 8 January 1969 through 20 July 1969.
- The applicant was AWOL from 30 September 1969 to 30 December 1969 and from 17 January 1970 to 18 January 1970.
- A Charge Sheet is not available for review; however, the Report of Investigation, dated 8 April 1970, shows the commander determined that the charge was substantiated by competent evidence. The maximum punishment for this offense

was a dishonorable discharge, total forfeiture of all pay and allowances, and confinement at hard labor for one year.

- The applicant was discharged on 24 April 1970 under the provisions AR 635-200, Paragraph 10, for the good of the service-in lieu of trial by court-martial. His service was characterized as UOTHC.

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, documents from his service record and separation, as well as a self-authored statement. 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 asserts he experienced overwhelming life events around the time of his misconduct, to include believing his parents died in a hurricane (as Hurricane Camille had just occurred), being served with divorce papers, and missing the birth of his baby girl. 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 contained his service treatment records (STR) though there was no report of any mental health concerns nor psychosocial stressors. Administrative documents with relevant medical and mental health data were also available in the supporting documents. He completed his separation medical examination on 7 April 1970. His Report of Medical Examination did not indicate any mental health concerns. The report also had in the notes "there was no reasonable grounds for belief that the applicant was or ever had been mentally defective, deranged, or abnormal. A psychiatric examination was not deemed to be appropriate." A Statement of Medical Condition on 24 April 1970 shows there had been no change in the applicant's medical condition since his last separation examination on 7 April 1970. No other records were provided to substantiate his claim.

e. 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. No other medical records were provided. There is no evidence the applicant has ever been diagnosed with a mitigating mental health condition.

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 at the time of service that mitigated his discharge. However, the applicant did assert having several significant/stressful experiences occur prior to his misconduct that he suggests contributed to 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, applicant asserts “other mental health” is related to his request for an upgrade to his discharge. However, he never specified a mental health condition, but instead shared the stressors he experienced during his time in the service.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. While this advisor is aware the whole separation packet is not available, it appears that the applicant was AWOL just prior to the investigation, the blank charge sheet and the orders for discharge. His separation, therefore, seems to be related to the AWOL charge, and that is where I will focus my opine. The applicant asserted other mental health was related to his request for upgrade, though did not specify a mental health condition and instead reported numerous stressful events occurred leading to his misconduct. There is no evidence that the applicant was experiencing a mitigating condition during his time in service, nor since his discharge. Of note, AWOL can be an avoidance behavior, consistent with the natural history and sequelae of several mental health conditions, including trauma and stressor related disorders. However, while the applicant asserts experiencing stressful events, he did not provide any evidence to support he'd be diagnosed with a mitigating mental health condition. Though, per Liberal Consideration, his contention is sufficient to warrant the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. Based on the lack of documentation showing in-service mitigating factors to overcome the misconduct or evidence of post-service

achievements or letters of reference to weigh in support of a clemency determination, 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 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.

2/28/2024

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. 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. Army Regulation (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. Paragraph 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.

4. AR 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation.

5. 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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.

//NOTHING FOLLOWS//