

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230005580

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 293 (Application for review of Discharge)
- 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:

a. He is the third child of seven. His father served 24 years in the military and he admired him. He had a girlfriend who was 17 years old and pregnant. He wanted to be responsible, so he decided to join the Army. He signed the contract to become a social worker. While he was in basic training, he was assigned to Germany to an artillery unit. He felt deceived and betrayed and this is when the trouble started.

b. He is a 66 year old man and believes he should receive a general discharge. He made some bad decisions while serving. He feels the recruiter should be responsible for lying to him and placing him in an artillery unit. His friend who is a retired Army General informed him at that time African Americans were treated unfairly and lied to. The applicant's application reflects "other mental health" as an issue/condition related to his request.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 15 November 1973.
- b. The applicant accepted nonjudicial punishment on 24 May 1974 for absenting himself from his unit from 9 April 1974 to 10 April 1974 and being absent without leave (AWOL) from 15 April 1974 to 15 May 1974.
- c. On 5 February 1975, charges were preferred against the applicant for one specification of AWOL from 4 January 1975 to 9 June 1975.
- d. On 24 June 1975, the applicant's commander initiated a personnel action which shows his duty status changed from present for duty (PDY) to AWOL, with an effective date of 24 June 1975.
- e. On 24 July 1975, the applicant's commander initiated a personnel action which shows his duty status changed from AWOL to PDY, with an effective date of 24 July 1975.
- f. On 25 July 1975, the applicant's commander initiated a personnel action which shows his duty status changed from PDY to excess leave, with an effective date of 12 July 1975.
- g. On an unspecified date, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood:
 - he may request discharge for the good of the service because charges have been preferred against him under the Uniform Code of Military Justice (UCMJ), which authorize the imposition of a bad conduct or dishonorable discharge
 - he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
 - he was advised of the implications that are attached to it
 - by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
 - under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
 - he had the opportunity to consult with appointed counsel for consultation
 - if his request for discharge was accepted, he may be discharged under other than honorable conditions
 - he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

h. On 9 July 1975, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10. The applicant would be issued an Undesirable Discharge Certificate and be reduced to private/E-1.

i. On 21 August 1975, he was discharged accordingly. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 3 months and 2 days of active service with 186 days lost from 4 January 1975 to 8 June 1975. His DD Form 214 also shows he received an under other than honorable conditions characterization of service and was issued a DD Form 258A.

4. His record contains an undated administrative discharge sheet in which the applicant states his sister had been under medical care the last few years. He found out before he went AWOL that she did not have long to live. His parents were overseas and that left him in the position where he was the only beneficiary and the only one she could look up to.

5. By regulation (AR 635-200), a Soldier who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

6. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant requests an upgrade of his under UOTHC discharge to honorable. He contends his misconduct is related to Other Mental Health Issues.

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 into the Regular Army 15 November 1973; 2) The applicant accepted nonjudicial punishment on 24 May 1974 for absenting himself from his unit from 9 April 1974 to 10 April 1974 and being absent without leave (AWOL) from 15 April 1974 to 15 May 1974; 3) On 5 February 1975, charges were preferred against the applicant for one specification of AWOL from 4 January 1975 to 9 June 1975; 4) On an unspecified date, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation 635-200; 5) On 9 July 1975, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, and on 21 August 1975, he was discharged accordingly.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not use during the applicant's time in service. No military BH-related records were provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a service-connected disability. No civilian BH records were provided for review.

d. The applicant requests an upgrade of his under UOTHC discharge to honorable. He contends his misconduct is related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment for the applicant during or after service and he provided no treatment documentation supporting his assertion of Other Mental Health Issues. In absence of medical documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues, and insufficient evidence to support an upgrade of his discharge characterization based on medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues , and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

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 contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment for the applicant during or after service and he provided no treatment documentation supporting his assertion of Other Mental Health Issues. In absence of medical documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues, and insufficient evidence to support an upgrade of his discharge characterization based on medical mitigation.

BOARD DISCUSSION:

1. 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.

2. The Board reviewed and concurred with the medical advisor’s review finding the applicant’s record void of any behavioral health diagnosis or treatment. The Board determined the characterization of service the applicant received upon separation was not in error or unjust.

3. The applicant's request for a video/telephonic appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video/telephonic appearance is not necessary to serve the interest of equity and justice in this case.

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.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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.

c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate, if such is merited by the Soldier's overall record during the current enlistment.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 DRBs and BCM/NRs 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, on 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.

5. 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 based on 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.

6. 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.

7. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//