

IN THE CASE OF: ██████████

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230006033

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. 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)
- Veterans Affairs (VA) decision letter
- In-service awards and letters of recognition
- Character reference letter (2)
- Civilian training and employment verification letters
- email response for request of medical documents, dated 18 September 2023

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 he had issues at the time of his discharge, and he was young in age. His discharge does not show the full picture of his service character from 1974 to 1982. Since his discharge he has served as a Corrections Officer and a Sheriff.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. Having had previous honorable service in the Regular Army, the applicant re-enlisted in the Regular Army, on 26 September 1979.
5. On 5 June 1979, he accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for violating a lawful general regulation by going downtown in his fatigue uniform, and for drinking alcoholic beverages, on or about

31 May 1979. His punishment included reduction in grade to E-3, forfeiture of \$75.00 pay for one month, and 14 days extra duty.

6. On 5 December 1979, he accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 15 November 1979. His punishment included reduction in grade to E-3, forfeiture of \$130.00 pay, and seven days restriction and extra duty.

7. On 18 December 1979, he accepted NJP under Article 15 of the UCMJ, for willfully disobeying a lawful order from his superior commissioned officer, on or about 17 December 1979. His punishment included reduction in grade to E-2, forfeiture of \$116.00 pay for one month, and 14 days restriction and extra duty.

8. On 18 August 1981, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 8 September 1981.

9. Before a special court-martial on 25 September 1981, at Fort Polk, LA., the applicant was found guilty of one specification of going AWOL from on or about 18 August 1981, to on or about 8 September 1981. The court sentenced him to a reprimand, 21 days extra duty, forfeiture of \$100.00 pay for a period of four months, and reduction in grade to E-3. The sentence was approved on 13 October 1981.

10. On 16 October 1981, the applicant accepted NJP under Article 15 of the UCMJ, for being drunk and disorderly in station, on or about 6 October 1981. His punishment included reduction in grade to E-1, forfeiture of \$275.00 pay for two months, and 45 days restriction and extra duty.

11. On 3 December 1981, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

12. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

13. He was discharged on 4 February 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b, for frequent involvement in incidents of a discreditable nature with civil or military authorities. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JKA with Reentry Code 3 and 3B. He completed 2 years, 3 months, and 18 days of net active service this period with 21 days of lost. He had 4 years, 7 months, and 14 days of prior active service.

14. On 10 August 2023, the ABCMR staff requested the applicant provide medical documents to support his PTSD issues. He was advised that he could contact the doctor that diagnosed him or his VA regional office for assistance. He responded by email stating that the VA sent him to their doctor for evaluation, in which the doctor told him that he has PTSD. Additionally, he stated that this report should be in his VA file.

15. The applicant provides the following (provided in entirety for the Board):

a. VA decision letter in support of his disability application that shows he was granted service connection for treatment purposes only due to degenerative arthritis of the lumbosacral spine s/p laminectomy.

b. In-service awards and commendation letters that detail his professional accomplishments while in the Army.

c. Two character reference letters that collectively attest to his professionalism, honesty, dedication, and hard work.

d. Civilian training and employment letters that detail his post service professional accomplishments as a correctional officer.

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 to honorable. He selected PTSD on his application as related to his request.

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 RA on 19 July 1974 and re-enlisted on 26 September 1979.
- On 5 June 1979, he accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for violating a lawful general regulation by going downtown in his fatigue uniform, and for drinking alcoholic beverages, on or about 31 May 1979.
- On 5 December 1979, he accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 15 November 1979.

- On 18 December 1979, he accepted NJP under Article 15 of the UCMJ, for willfully disobeying a lawful order from his superior commissioned officer, on or about 17 December 1979.
- On 18 August 1981, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 8 September 1981.
- On 25 September 1981, at Fort Polk, LA., before a special court-martial the applicant was found guilty of one specification of going AWOL from on or about 18 August 1981, to on or about 8 September 1981.
- On 16 October 1981, the applicant accepted NJP under Article 15 of the UCMJ, for being drunk and disorderly in station, on or about 6 October 1981.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
- Applicant was discharged on 4 February 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b, for frequent involvement in incidents of a discreditable nature with civil or military authorities. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

c. 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), VA decision letter, in-service awards and letters of recognition, character reference letters, civilian training and employment verification letters, and documents from his service record and separation packet. 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 had issues at the time of his discharge and was young. He further indicates his discharge does not show the full picture of the character of his service from 1974 to 1982. In addition, post-discharge he has served as a Corrections Officer and a Sheriff. The applicant did not indicate experiencing a traumatic event or incident that would serve as the basis for his assertion of PTSD.

e. No active-duty electronic medical records were available for review. On 3 December 1981, the applicant underwent a mental status evaluation. He was found to be mentally responsible, able to distinguish right from wrong, met retention standards, and psychiatrically cleared to participate in any administrative action deemed appropriate by the command. A medical examination on the same date, indicates the applicant had no psychiatric concerns.

f. Applicant is not service connected, possibly due to the characterization of his discharge, and limited VA electronic records were available for review. The applicant

was seen for a C and P evaluation on 28 July 2017 for medical concerns. The applicant has not been treated by the VA for BH condition. However, on 13 December 2023, after receiving ARBA's request for medical documentation, he was seen as a walk-in appointment at the VA. At the time, he reported receiving medication for depression from his primary care provider and was requesting to transfer his treatment to the VA. A follow-up appointment was scheduled, however, there was no confirmation of the applicant's reported treatment history.

g. 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. However, per Liberal Consideration guidelines, applicant's self-assertion of PTSD merits consideration by the board.

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 a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant selected PTSD as related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Given the applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing, an opine regarding mitigation cannot be provided. However, there is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD, the applicant did not submit any medical documentation substantiating the diagnosis and did not disclose any traumatic event. The medical documentation found in the VA electronic record, indicates an encounter on 13 December 2023 where the applicant endorsed having depression that started four years prior, nearly four decades post-military service, and was being treated by his primary care physician with medication management.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy

and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant’s petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. The Board found the applicant’s post service achievements as a correction officer and sheriff commendable as well as the character letters of support attesting to his integrity, professionalism and character. Consideration was given to the applicant’s decorations and awards, his DD Form 2124 with a prior period of honorable service from 19 July 1974 to 12 July 1976.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of frequent involvement in incidents of a discreditable nature with civil or military authorities. However, the Board determined during deliberation the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial upgrade.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amend the DD Form 214 for the period ending 4 February 1982 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19760713 thru 19790926

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrade of the applicant's under other than honorable conditions (UOTHC) discharge to honorable.

2/18/2024

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

4. Army Regulation 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14, paragraph 14-33b provides for the separation of Soldiers when they have patterns of misconduct for frequent incidents of discreditable nature with civil or military authorities. The issuance of a discharge UOTHC is normally considered appropriate for separations under the provisions of this chapter.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.

7. 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, 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//