

IN THE CASE OF: ██████████

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230006048

APPLICANT REQUESTS:

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Records)

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, the actions that led to his Article 15 were due to an aggravated officer in charge. He has served his country to the best of his ability and still serving veterans in his community. He is part of Veterans of Foreign War, American Veterans and was with the American Legion for 10-years. His military service was near the end when the incident happened. He would be grateful to receive some Veteran Administration health care and be eligible for loans and assistance. He notes post-traumatic stress disorder (PTSD) and other mental health issues are related to his request.
3. The applicant enlisted in the Regular Army on 25 June 1982. He served in Korea from 8 November 1982 to 9 November 1983.
4. The applicant's record contains a letter of reprimand, dated 2 July 1984. It had been reported that on 10 June 1984 he was in physical control of a motor vehicle at or near ██████████ while his blood alcohol level was greater than or equal to, .12% which was in violation of ██████████ law.

5. Through a statement, dated 11 July 1984, the applicant admitted and understood that he was wrong for his actions and that this was his first military offense. He received counseling through his chain of command, and a \$444.00 fine was imposed by the court of ██████████. He requested to continue on active duty and to have the letter of reprimand placed in his military personnel record jacket (MPRJ) rather than his official military personnel file (OMPF).
6. The applicant's commander on 11 July 1984 stated that the applicant was a fine Soldier with no previous administrative or judicial actions imposed against him. His conduct and performance as a troop mechanic has been nothing less than exemplary. He feels that the applicant has tremendous potential as a future leader. He has acknowledged with great remorse that the act he committed was wrong and very serious and has vowed not to repeat this offense. He recommended that the letter of reprimand be placed in his MPRJ rather than his OMPF .
7. A DA Form 4126-R (Bar to Reenlistment Certificate) dated 7 June 1985 show he was pending a general court martial for three counts of misappropriation of government property, driving under the influence on 11 June 1984 and he had numerous counseling statements for misconduct
8. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
9. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 30 July 1985, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. He was credited with completing 3 years, 1 month, and 6 days of active service this period. His service was characterized as under other than honorable conditions. He was awarded or authorized the Overseas Service Ribbon, Army Achievement Medal, Non-Commissioned Officer Professional Development Ribbon with Numeral 1 and the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).
10. 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.
11. 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.

12. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable Conditions discharge be upgraded to Under Honorable Conditions (General) due to experiencing PTSD and other mental health issues during his time in service. He is also requesting a telephonic appearance before the Board.

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 Regular Army on 25 Jun 1982. He was deployed overseas to Korea from 08 Nov 1982 - 09 Nov 1983. His awards included the Army Achievement Medal, Overseas Service Ribbon, NCO Professional Development Ribbon with numeral 1.
- On 2 July 1984, applicant received a letter of reprimand for driving a vehicle (10 June 1984) near [REDACTED] while his "blood alcohol level was greater than or equal to .12% which was in violation of [REDACTED] law."
- Applicant received a Bar to Reenlistment Certificate (7 June 1985) which indicated "he was pending a general court martial for three counts of misappropriation of government property, driving under the influence on 11 June 1984 and he had numerous counseling statements for misconduct."
- The applicant's separation packet is unavailable for review. However, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant "Under Other Than Honorable Conditions" on 30 Jul 1985.

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), his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that PTSD and Other Mental Health issues were mitigating factors in his discharge. His service record and supporting documents did not provide any indicators of behavioral health problems. Based on this documentation in its entirety, there is a lack of evidence the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. There was not any available data in JLV pertaining to medical or behavioral health evaluation or treatment.

f. In summary, although applicant is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is the applicant's own assertion that he experienced PTSD and other mental health problems while on active duty. However, there is an absence of documentation that he has been treated for PTSD or other mental health problems by VA, or by Army providers during his period of active duty, which had been initially experienced during applicant's time in service. 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 (PTSD or other mental health) condition/diagnosis that mitigates his misconduct. Also, the specific basis for separation could not be fully established, especially with reference to the nature of the counseling statements. However, per Liberal Consideration the applicant's assertion of PTSD and other mental health problems warrants 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, he self-asserted the presence of PTSD and other mental health problems contributing to his substance abuse, misappropriation of government property and counseling statements while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is applicant self-reported claim he initially encountered PTSD and other mental health problems while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of any in-service BH diagnoses, and there is no medical documentation indicating the VA has service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD and other mental health problems, the applicant did not submit any medical documentation substantiating his claim. In addition, the specific basis for separation could not be fully established, especially with reference to the nature of the counseling statements.

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 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. One possible

outcome was to grant relief based on liberal consideration. However, 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 (PTSD or other mental health) condition/diagnosis that mitigates his misconduct. The opine noted, an absence of documentation that the applicant has been treated for PTSD or other mental health problems by VA, or by Army providers during his period of active duty, which had been initially experienced during applicant’s time in service.

2. Further, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of operating a motor vehicle under the influence of alcohol. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

3. The applicant’s request for a personal appearance hearing 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 hearing is not necessary to serve the interest of equity and justice in this case.

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.

3/4/2024

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - 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 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.

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

4. 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.

5. 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//