

IN THE CASE OF: ██████████

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230006289

APPLICANT REQUESTS RECONSIDERATION OF:

- An upgrade of his under other than honorable conditions discharge to honorable
- A personal appearance before the Board

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210012097 on 15 November 2021.
2. The applicant states, in effect, an upgrade of his discharge would help him and his family move past the condition that we are currently in at this time. Giving him a better quality of life and access to benefits, housing, schooling, and medical care.
3. The applicant did not provide new evidence for the Board to consider. However, the applicant indicated on DD Form 293, item 21 (Are any of the following issues/conditions related to your request), "Other Mental Health."
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 20 September 1977 for a period of three (3) years, extending for an additional four (4) months on 21 February 1980.
  - b. His duty status changed as follows:
    - From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 2 June 1983
    - From AWOL to Dropped from Rolls (DFR), effective 2 July 1983

- From DFR to PDY, surrendered to military authorities, Fort Bragg, effective 2 August 1983

c. DD Form 458 (Charge Sheet), dated 4 August 1983, court-martial charges were preferred against the applicant as follows:

(1) Charge I (Violation of the UCMJ, Article 86), Specification: On or about 7 June 1983, without authority, absented himself from his unit and did remain so absent until on or about 2 August 1983.

(2) Charge II (Violation of the UCMJ, Article 92), Specification: Having knowledge of a lawful order issued by Captain [REDACTED] to return to his parent unit, an order which it was his duty, to obey, did, at Fort Bragg, North Carolina, on or about 7 June 1983, fail to obey the same.

d. On 10 August 1983, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, he 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 his request for discharge, he acknowledged his understanding that:

- by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of bad conduct or dishonorable discharge
- he acknowledged he understood that if his discharge request was accepted he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
- he was advised he could submit any statements he desired in his own behalf; he did not submit any statements

e. The applicant's chain of command recommended approval of the requested discharge for the good of the service under other than honorable conditions.

f. On 13 October 1983, the separation authority approved the applicant's request for discharge, under the provisions of AR 635-200, Chapter 10, for the good of the service, directed that he be discharged under other than honorable conditions, and reduced to the lowest enlisted grade unless already serving in that grade.

g. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged on 25 October 1983, under the provisions of AR 635-200, Chapter 10, For the Good of the Service – in Lieu of Court-Martial, and his service was characterized as under other than honorable conditions (Separation Code KFS and Reenlistment Code of 3, 3B, 3C). He completed 5 years, 11 months, and 6 days of net active service this period. He had lost time from 2 June 1983 to 1 August 1983.

h. His DD Form 215 (Correction to DD Form 214), dated 25 April 2023, corrects item 18 (Remarks) as follows:

- (add) member has completed first full term of service
- (add) continuous honorable active service from 20 September 1977 to 24 July 1980

5. By regulation, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally considered appropriate.

6. AR 15-185 (Army Board for Correction of Military Records) states, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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

#### 8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. Applicant indicated on his DD Form 293, "Other Mental Health" as potentially mitigating his discharge.

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 20 September 1977.
- His duty status changed as follows:
- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 2 June 1983

- From AWOL to Dropped from Rolls (DFR), effective 2 July 1983
- From DFR to PDY, surrendered to military authorities, Fort Bragg, effective 2 August 1983
- On 4 August 1983, court-martial charges were preferred against the applicant as follows:
  - Charge I (Violation of the UCMJ, Article 86), Specification: On or about 7 June 1983, without authority, absented himself from his unit and did remain so absent until on or about 2 August 1983.
  - Charge II (Violation of the UCMJ, Article 92), Specification: Having knowledge of a lawful order issued by Captain V.E.S., to return to his parent unit, an order which it was his duty, to obey, did, at Fort Bragg, North Carolina, on or about 7 June 1983, failed to obey the same.
- Applicant was discharged on 25 October 1983. 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 the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service.
- Applicant applied for an upgrade of characterization of service which was denied on 15 November 2021 by the ABCMR. However, his DD Form 215 (Correction to DD Form 214), dated 25 April 2023, corrects item 18 (Remarks) as follows:
  - (add) member has completed first full term of service
  - (add) continuous honorable active service from 20 September 1977 to 24 July 1980

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 293, DD Form 214, DD Form 215, ABCMR Record of Proceedings (ROP), and 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.

The applicant states, an upgrade of his discharge would help him, and his family move past the condition they are currently in at this time. Giving him a better quality of life and access to benefits, housing, schooling, and medical care.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from his time of service evidencing a behavioral health condition. No VA electronic medical records were available for review and the applicant is not service connected. In addition, the applicant did not submit any medical documentation post-military service indicating any BH condition.

e. 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.

**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 indicated on his DD Form 293, "Other Mental Health" as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant checked having a BH condition but does not indicate the condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH conditions. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant endorsed "Other Mental Health" as related to his request, he did not provide any medical documentation evidencing a BH diagnoses or condition.

**BOARD DISCUSSION:**

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined 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 evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20210012097 on 15 November 2021.

3/20/2024

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CHAIRPERSON

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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. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses 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. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a(1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b(1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. c. Paragraph 3-7b(2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses 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. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

2. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which 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. 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. 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.

//NOTHING FOLLOWS//