

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230006330

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- change of narrative reason for separation

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- DD Form 214 (Report of Separation from Active Duty), for the period ending 31 March 1978
- Post-Service Medical Records
- Character Letter

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 an upgrade would provide him housing and medical assistance. Additionally, the applicant annotated on his application "other mental health issues" as an issue/condition related to his request.
3. Through his personal statement he states he had a drug problem with heroin which resulted in him making bad decisions and going absent without leave (AWOL). He tried to get help through his command. He was told it was his fault and to figure it out, so he went AWOL. He returned from being AWOL and was served with a court-martial, in which he was told was his best option. He went to drug rehabilitation and later married and has four children.

4. The applicant enlisted in the Regular Army on 12 February 1976.
5. On 1 September 1976, the applicant's commander initiated a personnel action which changed the applicant's duty status from present for duty (PDY) to AWOL.
6. On 2 September 1976, the applicant's commander initiated a personnel action which changed his duty status from AWOL to PDY. The remarks reflect the applicant surrendering to the first sergeant.
7. On 10 November 1976, the applicant's commander initiated a personnel action which changed his duty status from ordinary leave to AWOL.
8. On 10 November 1976, the applicant's commander initiated a personnel action which changed his duty status from AWOL to PDY. The remarks reflect the applicant surrendering to the staff duty noncommissioned officer. He was absent for a period of 1.5 hours.
6. He accepted nonjudicial punishment on 12 November 1976 for being AWOL from 9 November 1976 to 10 November 1976. The punishment imposed included reduction to the grade of private (PVT)/E-1, forfeiture of 7 days of pay (\$85.00), 14 days of extra duty and restriction to the billets for 60 days.
7. On 28 February 1977, the applicant's commander initiated a personnel action which changed his duty status from PDY to AWOL.
8. On 7 March 1977, the applicant's commander initiated a personnel action which changed his duty status from AWOL to PDY. The remarks reflect the applicant surrendering to the first sergeant.
8. He accepted nonjudicial punishment on/for:
 - a. 8 March 1977 for being AWOL from 28 February 1977 to 7 March 1977. The punishment imposed included reduction to the grade PVT/E-1, suspended for a period of 45 days and forfeiture of \$150.00 pay per month for 2 months.
 - b. 29 November 1977 for willfully disobeying a lawful order. The punishment imposed included forfeiture of \$15.00 pay per month for 1 month and 7 days of extra duty.
9. On 7 December 1977, the applicant's duty status changed from ordinary leave to AWOL.

10. On 6 January 1978, the applicant's duty status changed from AWOL to dropped from unit rolls (DFR).
11. On 18 January 1978, the applicant's duty status changed from DFR to attached. The remarks reflect the applicant surrendered to the first sergeant.
12. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, court-martial charges were preferred against the applicant for violations of the UCMJ; the relevant DD Form 458 (Charge Sheet) is not available for review.
13. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service, in lieu of court-martial. His service was characterized as under other than honorable conditions, and he was credited with 2 years of active service. His DD Form 214 also shows lost time of 50 days.
14. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. The applicant has provided no evidence that would indicate the contrary.
15. His record contains a letter from the Army Discharge Review Board (ADRB), dated 6 February 1980, which shows after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly discharged. His request for a change in the type and nature of discharge was denied.
16. The applicant provides:
 - a. 39-pages of medical documents dated from 29 June 2022 through 26 June 2023 which annotates he was diagnosed on 30 June 2022 with chronic systolic heart failure.
 - b. A character reference letter from his son attesting to his father being a great community leader for over 20 years. He has raised four successful children who have made great contributions to society. He was young and made a mistake and did not fully understand the ramifications behind his actions. An upgrade of his discharge is humbly requested.

17. 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.

18. 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.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge to honorable and a change in his narrative reason for separation.

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 12 February 1976.
- Applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, court-martial charges were preferred against the applicant for violations of the UCMJ; the relevant DD Form 458 (Charge Sheet) is not available for review.
- On 1 September 1976, the applicant's commander initiated a personnel action which changed the applicant's duty status from present for duty (PDY) to AWOL.
- Applicant accepted nonjudicial punishment on 12 November 1976 for being AWOL from 9 November 1976 to 10 November 1976.
- Applicant accepted nonjudicial punishment on/for:
 - 8 March 1977 for being AWOL from 28 February 1977 to 7 March 1977.
 - 29 November 1977 for willfully disobeying a lawful order.
- 7 December 1977, the applicant's duty status changed from ordinary leave to AWOL.
- On 6 January 1978, the applicant's duty status changed from AWOL to dropped from unit rolls (DFR).
- Applicant's DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service, in lieu of court-martial. His service was characterized as under other than honorable conditions, and he was credited with 2 years of active service.

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, ABCMR Record of Proceedings (ROP), self-authored statement, character reference letter, medical records, 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.

d. The applicant states an upgrade would provide him with housing and medical assistance. Additionally, the applicant selected on his application "other mental health" as related to his request. In his personal statement, he reports having had a drug problem with heroin which resulted in him making bad decisions and going absent without leave (AWOL). He tried to get help through his command. He was told it was his fault and to figure it out, so he went AWOL. He returned from being AWOL and was served with a court-martial, which he was told was his best option. He went to drug rehabilitation and later married and has four children.

e. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in service. 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 substantiating his assertion of other mental health condition. The applicant provides 39-pages of medical documents dated from 29 June 2022 through 26 June 2023, indicating a cardiac condition and history of stroke. However, on screenings of his mental health on encounters dated 29 June 2022 and 7 September 2022, the medical provider indicates the applicant is negative for depression, anxiety, memory loss, current substance abuse, and suicidal ideation. No mental health concerns were noted.

f. 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 condition 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports experiencing addiction to heroin while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH condition and the VA has not service-connected the applicant for any condition. And while the applicant selected other mental health condition as related to his request, he does not indicate having a BH condition and the medical documentation he provided relates to a cardiac condition but does not provide any indication of a BH diagnosis. However, per Liberal Consideration guidelines, the applicant’s self-assertion of other mental health merits consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the multiple AWOL offenses leading to the applicant’s separation, as well as the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

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.

5/14/2024

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, an UOTHC discharge was normally considered appropriate.

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.

//NOTHING FOLLOWS//