

IN THE CASE OF: ██████████

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230006436

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- self-authored statement, undated
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 3 May 1991
- two statements of support, dated 3 November 2022 and 15 November 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he excelled in the military. He always put forth maximum effort and became a sergeant/E-5 within three years. While stationed in Germany, he discovered his wife relapsed into drug use and had a relationship with his first sergeant. His life spun out of control. His homelife became untenable, and he was required to move into the barracks. Ending his life became his only recourse. He swallowed drain-o and was flown back to the United States. Subsequently, he was discharged from service. He has since put himself through multimedia design school, theology school, and learned how to weld. He served his country with honor and would gladly serve again.

3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA). His record is currently checked

out. Despite the lack of an OMPF, the applicant provided a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of his petition.

4. The applicant enlisted in the Regular Army on 13 November 1985. Upon completion of initial entry training, he was awarded military occupational specialty 31K (Combat Signaler). He reenlisted on 1 April 1988.

5. The applicant was discharged on 3 May 1991, 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 DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code RE-4. He was credited with 5 years, 5 months, and 20 days of net active service. He was authorized or awarded the following:

- Army Achievement Medal (2nd award)
- Army Good Conduct Medal
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with rifle bar (M-16)
- Noncommissioned Officer's Professional Development Ribbon
- Overseas Service Ribbon
- Parachutist Badge

6. The applicant provides:

a. In a statement of support, dated 3 November 2022, the senior pastor of [REDACTED] Church, states the applicant serves as an ordained minister and active member of the choral ministry. He displays leadership abilities while working with fellow choir members and musicians.

b. In a statement of support, dated 15 November 2022, the applicant's younger brother, Staff Sergeant (Retired) [REDACTED], states the applicant was a positive role model for his younger brothers after the dissolution of their parents' marriage. He encouraged them to do what was right and was always a voice of reason. It pains him that he did not complete his period of service, but he never complains. He has had several ups and downs, yet he learns from the experience and becomes a better person. He has been called to the ministry and become a community figure.

7. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

8. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. In his application he did not indicate any BH condition 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 13 November 1985. He reenlisted on 1 April 1988.
- Applicant was discharged on 3 May 1991, 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 DD Form 214 confirms his character of service was UOTHC, with separation code KFS and reentry code RE-4.
- The specific facts and circumstances surrounding his discharge from the Army are not available for review.

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 149, DD Form 293, ABCMR Record of Proceedings (ROP), DD Form 214, self-authored statement, and two letters of support. The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA). His record is currently checked out and unavailable for review.

d. The applicant states, he excelled in the military. He always put forth maximum effort and became a sergeant/E-5 within three years. While stationed in Germany, he discovered his wife relapsed into drug use and had a relationship with his first sergeant. His life spun out of control. His homelife became untenable, and he was required to move into the barracks. Ending his life became his only recourse. He swallowed drain-o and was flown back to the United States. Subsequently, he was discharged from service. He has since put himself through multimedia design school, theology school,

and learned how to weld. He served his country with honor and would gladly serve again.

e. No active-duty electronic medical records were available for review and no hard copy medical documentation from the time of service was submitted for review. The applicant is not service connected and there are no VA electronic medical records available for review. In addition, no medical documentation post-military service substantiating any behavioral health condition or diagnosis was submitted for review.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant experienced a behavioral health condition during military service. Regardless, an opine regarding mitigation cannot be provided without the specific facts and circumstances that led to his discharge from military service.

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 does not contend that any BH condition mitigates his discharge. However, he indicates marital conflict/infidelity as related to his discharge

(2) Did the condition exist or experience occur during military service? No. The applicant does not self-assert any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant is not asserting any BH condition, and no medical documentation is available that would support mitigation of his discharge from military service. Regardless, without the specific facts and circumstances of the misconduct that led to his discharge, an opine regarding mitigation based on a BH condition cannot be provided.

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

concluded with the advising official finding insufficient evidence the applicant experienced a behavioral health condition during military service. Regardless, an opine regarding mitigation cannot be provided without the specific facts and circumstances that led to his discharge from military service.

2. The Board found the applicant’s post service achievements as a minister serving within his community very commendable and his character letters of support attesting to his character and integrity since his discharge. The Board determined there is insufficient evidence of in-service mitigating factors without the facts and circumstances surrounding the applicant’s discharge for the Board to properly determine if there was an error. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 amending the DD Form 214 for the period ending 3 May 1991 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19851113 UNTIL 19880330

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 an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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.

ADMINISTRATIVE NOTE(S): N/A

REFERENCES:

1. Title 10, USC, 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, USC, 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.

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. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

4. Army Regulation 635-5 (Personnel Separations), 15 August 1979, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

5. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. 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.

6. 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

Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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, 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.

//NOTHING FOLLOWS//