

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230006552

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 made a mistake in 1984 with his checking account at the credit union at Fort Stewart, GA. He messed up his math that resulted in his account being overdrawn. His brigade was called for military exercises in California so he had no way of making it right. When he returned to Fort Stewart, he was immediately summoned for an interview by CID to speak with an investigator. He made another mistake by lying to the investigator because he felt intimidated by him.
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), as an issue/related to his request.
4. Having prior U.S. Army Reserve service, the applicant enlisted in the Regular Army on 3 April 1984.
5. The applicant was investigated by the Criminal Investigative Division for the utterance of 15 worthless checks totaling \$588.00 from an account marked as closed.
 - a. The investigator verified that the applicant was at the National Training Center during October 1985 at the time of the initial commencement of the investigation with an unknown return date.

b. On 26 October 1985, the applicant was advised of his rights and voluntarily waived them. The applicant stated he had been advised that he would be receiving an additional \$585.00 in back pay that would be directly deposited in his account. He wrote the checks believing they would be covered by this back pay.

c. On 1 November 1985, during a subsequent interview the applicant confessed that the information regarding being told he had a pay adjustment was a lie.

d. On 7 November 1985, the investigator was advised that the applicant's account had not been officially closed until 7 November 1985 and that the reason for the indication that it had been closed earlier was due to a policy that if several checks were received on an account that had insufficient funds, they would be declined and marked as closed until such time as monies were available to cover them.

e. The final report was referred to the applicant's command for appropriate action.

6. Court-martial charges were preferred against the applicant on 8 January 1985 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:

a. On diverse occasions from on or about 15 September 1984 until on or about 27 September 1984, he stole \$512.72 in property or US currency the property of the Army and Air Force Exchange Service.

b. On diverse occasions from on or about 15 September 1984 until on or about 27 September 1984 with intent to defraud uttered worthless checks in the amount of \$512.72.

7. A notice of a hearing under the provisions of Article 32 was issued on 23 January 1985 at which time the applicant submitted a request for discharge in lieu of trial by court-martial.

8. The applicant consulted with legal counsel on 28 January 1985 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. 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 a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA), and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He was advised he could submit any statements he desired in his own behalf; however, the applicant waived this right.

9. Between 21 and 22 February 1985, the applicant's chain of command recommended approval of the applicant's request for discharge in lieu of trial by court-martial, and that he receive a UOTHC discharge.

10. The separation authority approved the applicant's request for discharge on 28 February 1985, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that the applicant be reduced to the lowest enlisted grade and receive a UOTHC.

11. The applicant was discharged on 3 March 1985 in the grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial and his service was characterized as UOTHC. He was credited with 11 months, and 9 days of active service this period with 3 months and 23 of prior active service and 2 years, 5 months, and 23 days of prior inactive service.

12. On his application the applicant indicates he served in Grenada during Operation Urgent Fury. There is no evidence to support this fact.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. In determining whether to grant relief the Boards for Correction of Military/Naval Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable condition (UOTHC) discharge. The applicant selected post-traumatic stress disorder (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). Pertinent to this advisory are the following:

- With prior U.S. Army Reserve service, the applicant enlisted in the Regular Army on 3 April 1984.
- The applicant was investigated by the Criminal Investigative Division for the utterance of 15 worthless checks totaling \$588.00 from an account marked as closed.
- On 26 October 1984, the applicant was advised of his rights and voluntarily waived them. The applicant stated he had been advised that he would be receiving an additional \$585.00 in back pay that would be directly deposited in his account. He wrote the checks believing they would be covered by this back pay.
- On 1 November 1984, during a subsequent interview the applicant confessed that the information regarding being told he had a pay adjustment was a lie.
- Court-martial charges were preferred against the applicant on 8 January 1985 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:
- On diverse occasions from on or about 15 September 1984 until on or about 27 September 1984, he stole \$512.72 in property or US currency the property of the Army and Air Force Exchange Service.
- On diverse occasions from on or about 15 September 1984 until on or about 27 September 1984 with intent to defraud uttered worthless checks in the amount of \$512.72.
- The applicant was discharged on 3 March 1985 in the grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial, his service was characterized as UOTHC with separation code JFS and RE - 4.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "made a mistake in 1984 with his checking account at the credit union at Fort Stewart, GA. He messed up his math that resulted in his account being overdrawn. His brigade was called for military exercises in California, so he had no way of making it right. When he returned to Fort Stewart, he was immediately summoned for an interview by CID to speak with an investigator. He made another mistake by lying to the investigator because he felt intimidated by him."

Due to the period of service, no active-duty electronic medical records were available for review. In addition, the applicant provides no rationale or index trauma as the basis for his contention of PTSD.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no electronic medical records were available for review. On 11 August 2023, a member of the ARBA Case Management Division contacted the applicant to inform him he must provide medical documentation in support of his contention of PTSD. No response was received.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD, but provides no rationale or index trauma as the basis for his contention.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is no evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any mental health condition. Regardless of diagnosis, larceny is not part of the history or natural sequelae of the applicant's asserted BH condition. In addition, the repeated pattern of his misconduct, along with lying to avoid the consequences of his actions, indicates this was not a spur of the moment or impulsive decision. The applicant engaged in purposeful, conscious decisions. In addition, even if PTSD symptoms were present at the time of his misconduct, they do not affect the ability to distinguish right from wrong and act in accordance with the right.

g. Per Liberal Consideration guidelines, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with stealing and intent to defraud, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding no evidence of a behavioral health condition. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

10/28/2024

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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, 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 under other than honorable conditions discharge was normally considered appropriate. ==== At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

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 Discharge Review Boards (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 a 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 misconduct that led to the discharge.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//