

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230006628

APPLICANT REQUESTS: an upgrade of his character of service.

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States), 14 March 2023
- self-authored statement, 27 February 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 5 November 1980
- character reference, from U.S. Army Veteran ██████████ 22 February 2023
- character reference, from Retired U.S. Air Force Veteran ██████████ 22 February 2023
- character reference, from Reverend Dr. ██████████ 11 March 2023

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, in effect, his discharge was too harsh for his crime. He enlisted as a young man to continue his family's history of service to the country. His career was positive, and he enjoyed the camaraderie; he was going to make a career from his service. He got married and did not understand the demands of serving his country and maintaining a family life. He started to encounter negative issues. He was dealing with marital issues and then his father got sick. He returned home to deal with his father's health; however, being home took a toll on his mental capacity. It was difficult for him to function and be a productive member in the Army. He lost the three most important things in his life, his marriage, his father, and his career.
3. The applicant enlisted in the Regular Army on 1 August 1978 for a 3-year period. After completion of his initial entry training, he earned the military occupational specialty of 11B (infantryman).

4. Five DA Forms 4187 (Personnel Action) show the applicant's status as:

a. On 26 December 1979, he was absent without leave (AWOL) to dropped from rolls (DFR).

b. On 8 January 1980, he went from DFR to returned to military control; he surrendered to civilian authorities.

c. On 9 January 1980, he went from returned to military control to present for duty.

d. On 11 January 1980, he went from AWOL to DFR; he was read Article 15 charges on 10 January 1980.

e. On 22 July 1980, he went from DFR to attached. The applicant was apprehended by civilian authorities on 14 July 1980 for a civilian charge of reckless driving. He was confined to the county jail pending court appearance. On 16 July 1980, he appeared in court and was sentenced to 6 days in jail. On 22 July 1980 he completed his sentence and was returned to military control.

5. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 5 November 1980, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge conduct triable by court martial. His character of service was under other than honorable conditions (UOTHC). He was credited with 1 year, 6 months, and 14 days of net active service, He had time lost from 2 January 1979 to 9 January 1979, 24 April 1979 to 29 April 1979, 6 November 1979 to 19 November 1979, 26 November 1979 to 7 January 1980, and from 11 January 1980 to 21 July 1980.

6. The applicant provides three-character references, stating the following:

a. From U.S. Army Veteran [REDACTED] dated 22 February 2023, the applicant is well respected, a positive role model, professional, honest, team oriented, organized, competent and a caring person. He has made positive impacts on the local community, where he volunteered to help start up and became a member of the local baseball team, he self-taught and developed skills and abilities and became an automotive mechanic, he filled a community void by repairing cars with little to no compensation, and he has convinced numerous friends, relatives and others to pursue a career in the military or attend college.

b. From U.S. Air Force retired Veteran [REDACTED] dated 22 February 2023, the applicant displays integrity, honesty, and attention to detail in their involvements. The

applicant is meticulous, competent, a caring person who helps anyone when needed, he is intelligent, professional, dependable, and a role model.

c. From Reverend Doctor [REDACTED] dated 11 March 2023, states the applicant is a role model and a man of character, respect, and has trustworthiness in the community. He mentors others, is community oriented, organized and a caring person, who continues to make a positive impact. He was instrumental in establishing and promoting the local baseball team, with volunteering his time and efforts. He became an automotive mechanic, where he teaches others the basic mechanical skills to perform automotive repairs on their own vehicles. He has love for his country and convinces others to pursue their career in the armed forces.

7. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, from the Soldier, to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

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. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced a mental health condition, which mitigates his discharge.

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: 1) The applicant enlisted in the Regular Army on 1 August 1978; 2) The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 5 November 1980, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge conduct triable by court martial. His character of service was under other than honorable conditions (UOTHC) with a separation code JFS and reentry code 3 and 3B. He was credited with 1 year, 6 months, and 14 days of net active service, He had time lost from 2 January 1979 to 9 January 1979, 24 April 1979 to 29 April 1979, 6 November 1979 to 19 November 1979, 26 November 1979 to 7 January 1980, and from 11 January 1980 to 21 July 1980.

c. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

d. In his application, the applicant noted his mental health at the time of his active service was related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. The applicant reported dealing with a number of stressors in his family and marital life. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV was void of medical documentation, and the applicant does not receive service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. In addition, there is insufficient evidence the applicant has been diagnosed a mental health condition.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. In addition, there is insufficient evidence beyond self-report the applicant has been diagnosed with a service-connected mental health condition. However, the applicant contends he experienced a mental health condition or experience while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, 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 Medical Advisor. The applicant provided letters of reference that the Board found insufficient 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

there being insufficient evidence to establish whether or not his misconduct was mitigated by a mental health condition. 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/24/2024

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 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.

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 (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.

5. 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//