

IN THE CASE OF: ██████████

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230006718

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his under other than honorable conditions discharge
- payment of his last check upon being released from the Army on 28 August 1974

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)
- DD Form 149 (Application for Correction of Military Records)

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 AR20070009915 on 6 December 2007.

2. The applicant states:

a. He has documents that he suffers from major depression for years. He has documentation to prove it and the medication that was taken by name. His assessment plan: depression/insomnia, back pain, and BPH (unclear abbreviation). He lists the medication for each condition.

b. He was never paid his monthly check on being released from the service. He was told it would be sent to him, but it never was. This happened in August 1974.

3. The applicant's service records are not available for review. An exhaustive search was conducted to locate his records, but they could not be found. However, there remains a reconstructed record consisting of a DA Form 20 (Enlisted Qualification Record and a DD Form 214 (Report of Separation from Active Duty), which is sufficient for the Board to conduct a fair and impartial review of his case.

4. Review of the applicant's available records shows:

a. The applicant enlisted in the Regular Army and entered active duty on 10 April 1973. He completed training and was awarded military occupational specialty (MOS) 11B (Light Weapons Infantryman).

b. Following completion of training, the applicant was assigned to the 1st Battalion, 8th Cavalry, 1st Cavalry Division, Fort Hood, TX. He held the grade of private/E-2.

c. The applicant's DA Form 20 (Enlisted Qualification Record) reflects multiple periods of absent without leave (AWOL) and/or dropped from the rolls (DFR) as a deserter:

- 5 September to 11 September 1973, AWOL 7 days
- 8 January to 13 January 1974, AWOL, 5 days
- 4 February to 19 February 1974, AWOL, 16 days
- 1 April to 2 July 1974, AWOL 93 days

d. On 27 September 1973, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from 5 through 11 September 1973. His punishment consisted of forfeiture of \$79.00 and 14 days of restriction and extra duty.

e. The applicant's record further shows that he accrued an additional 25 days of AWOL during two periods between 8 January 1974 and 19 February 1974.

f. On 1 April 1974, the applicant departed AWOL from his unit at Fort Hood. He was dropped from the rolls on 2 April 1974. He ultimately returned to military control at Fort Hood on 2 July 1974.

g. The applicant's separation packet is not available for review. However, his records contain a DD Form 214, Report of Separation from Active Duty, that shows he was discharged on 28 August 1974, under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations), for the good of the service in lieu of trial by court-martial with an under other than honorable conditions characterization of service. He completed 1 year and 19 days of creditable active military service, and he had accrued 122 days of time lost due to being AWOL.

h. On 6 December 2007, the Board denied the applicant's request to upgrade his discharge. The Board stated:

(1) The applicant's separation document confirms he was discharged under the provisions of chapter 10, AR 635-200, for the good of the service, in lieu of trial by court-

martial. In connection with such a discharge, he was charged with the commission of an offense punishable with a punitive discharge under the UCMJ. Procedurally, he was required to consult with defense counsel, and to voluntarily request separation from the Army in lieu of trial by court-martial. In doing so, he would have admitted guilt to the stipulated offense(s) under the UCMJ that authorized the imposition of a punitive discharge.

(2) In the absence of information to the contrary, it is concluded that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process.

(3) The record shows the applicant voluntarily requested discharge to avoid a court-martial that could have resulted in his receiving a punitive discharge. The undesirable discharge he received was normal and appropriate under the regulatory guidance, and his short and undistinguished record of service clearly did not support a general or an honorable discharge at the time, nor does it support an upgrade now.

(4) In order to justify correction of a military record the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant has failed to submit evidence that would satisfy this requirement.

5. The applicant does not provide contemporaneous travel or pay vouchers or Leave and Earnings Statements related to his 1974 pay. Likewise, there is no evidence the applicant addressed his pay issue with the Finance Office and was denied relief.

6. By regulation, AR 635-200 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.

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. The applicant requests reconsideration of his previous request to upgrade his UOTHC discharge to honorable. He contends his misconduct was related to Major Depressive Disorder.

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 into the Regular Army on 10 April 1973; 2) As detailed in the ROP, the applicant went AWOL on four separate occasions between 5 September 1973 and 2 July 1974; 3) The applicant's separation packet is not available for review, however, his records contain a DD Form 214, Report of Separation from Active Duty, that shows he was discharged on 28 August 1974, under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations), for the good of the service in lieu of trial by court-martial with an under other than honorable conditions characterization of service (Separation Code KFS and Reenlistment Codes 3 and 3B).

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No military BH records were provided for review. A review of JLV was void of any BH diagnosis or treatment history for the applicant and he does not have a service-connected disability. The applicant noted in his casefile that he has had a history of Major Depression for years with documentation to prove it, however, no medical documentation was provided for review. The applicant instead listed his asserted diagnosis of MDD/Insomnia with a plan to continue Prozac and Trazadone. No civilian BH records were provided for review.

d. The applicant is requesting reconsideration for his previous request for upgrade of his UOTHC to honorable. He contends his misconduct was related to MDD/Insomnia. A review of the records was void of any BH diagnosis or treatment history documentation for the applicant during or after military service. The applicant listed a diagnosis of MDD/Insomnia on his DD Form 293 and listed that he was taking medications to address the condition, however, the applicant's handwritten record is not sufficient to be considered medical documentation. In absence of medical documentation supporting his contention, there is insufficient evidence that to establish that his misconduct related to MDD/Insomnia and insufficient evidence to support an upgrade of his discharge characterization.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, the applicant contends his misconduct was related to MDD/Insomnia and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

#### 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 contends his misconduct was related to MDD/Insomnia.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after military service and he provided no medical documentation supporting his assertion of MDD/Insomnia. In absence of medical documentation supporting his contention, there is insufficient evidence to establish that his misconduct was related to MDD/Insomnia and insufficient evidence to support an upgrade of his discharge characterization.

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 behavioral health claim and the review and conclusions of the Army Review Boards Agency Behavioral Health Medical 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 a behavioral 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20070009915 on 6 December 2007.

3/20/2024

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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 states that 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. Paragraph 3-7b states that 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.

2. 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.

3. 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.

4. 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.

5. 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//