

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006792

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) progress notes

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 AC82-01410 on 11 August 1982.
2. The applicant states that he was suffering from depression and believes he was unable to comprehend his actions. He has continued to have anxiety attacks and depression. He has served with the American Legion in Plainville, CT, for 35 years. He has become a changed man and has helped many Veterans.
3. The applicant enlisted in the Regular Army on 29 January 1959, for 3 years. The highest grade he attained was E-3.
4. On 28 January 1960, the applicant was admitted to the hospital for psychiatric observation. The attending physician diagnosed him with acute situational maladjustment characterized by resentment, depression, suicidal ideas, retardation (motor and mental) and anorexia.
5. On 2 February 1960, the applicant was reported absent without leave (AWOL) and remained absent until he returned to military authorities on 12 February 1960.
6. On 20 September 1960, the applicant was reported AWOL a second time, and remained absent until he returned to military authorities on 20 October 1960.

7. Before a special court-martial at Fort Devens, MA on 18 November 1960, the applicant was found guilty of one specification of going AWOL, from on or about 20 September 1960 until on or about 20 October 1960. The court sentenced him to confinement at hard labor for four months, forfeiture of \$55.00 pay per month for a like period, and reduction to the grade of E-1. The sentence was approved on 2 December 1960.

8. On 8 January 1961, the applicant was reported AWOL a third time, and remained absent until he returned to military authorities on 7 February 1961.

9. On 16 February 1961, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

10. Before a special court-martial at Fort Devens, MA on 21 February 1961, the applicant was found guilty of one specification of going AWOL, from on or about 8 January 1961 until on or about 7 February 1961. The court sentenced him to confinement at hard labor for six months, and forfeiture of \$60.00 pay per month for a like period. The sentence was approved on 1 March 1961.

11. On 1 March 1961, the applicant underwent a neuropsychiatric evaluation, while in confinement. The attending physician furnished a diagnosis as: passive aggressive reaction, chronic, moderate, manifested by basic passive aggressive personality, poor impulse control, AWOLs, lack of adherence to the rules and regulations in the environmental situation to which he belongs. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

12. The applicant's immediate commander notified him on 4 March 1961, that he was being recommended for discharge under the provisions of Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), by reason of unfitness. As the specific reason, the commander cited the applicant's periods of AWOL, two periods of confinement, and his two court-martials.

13. The applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he requested to have his case considered by a board of officers.

a. He declined to submit a statement in his own behalf. He requested representation by counsel.

b. He acknowledged he understood that he may be given an undesirable discharge.

14. On 21 March 1961, a board of officers convened to determine if the applicant should be eliminated from the service. The Board determined that there had been

evidence of unfitness within the meaning of Army Regulation 635-208, paragraph 3A (frequent incidents of a discreditable nature with military authorities) which render retention in the service undesirable. The Board further recommended the issuance of a DD Form 257A (General Discharge Certificate).

15. Consistent with the board's findings and recommendation, the separation authority approved the recommended discharge on 7 April 1961. He directed the issuance of a General Discharge Certificate.

16. The applicant was discharged on 7 April 1961. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-208, with Separation Program Number 28B (unfitness) and Reentry Code 3. His service was characterized as under honorable conditions (general). He completed 1 year, 8 months, and 16 days of net active service, with 175 days of lost time.

17. The applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 11 August 1982, the Board voted to deny relief and determined that the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

18. The applicant provides VA progress notes that show he has been diagnosed and treated for a persistent depressive disorder, anxiety, and bereavement. These notes are provided in their entirety for the Board's review within the supporting documents.

19. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

20. MEDICAL REVIEW:

a. Request: The applicant is requesting an upgrade of his under honorable conditions (general) discharge to honorable.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 29 January 1959.
- On 2 February 1960, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 12 February 1960.

- On 20 September 1960, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 20 October 1960.
- Before a special court-martial at Fort Devens, MA on 18 November 1960, the applicant was found guilty of one specification of going AWOL, from on or about 20 September 1960 until on or about 20 October 1960.
- On 8 January 1961, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 7 February 1961.
- Before a special court-martial at Fort Devens, MA on 21 February 1961, the applicant was found guilty of one specification of going AWOL, from on or about 8 January 1961 until on or about 7 February 1961. The court sentenced him to confinement at hard labor for six months.
- The applicant's immediate commander notified him on 4 March 1961, that he was being recommended for discharge under the provisions of Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), by reason of unfitness. As the specific reason, the commander cited the applicant's periods of AWOL, two periods of confinement, and his two court-martials.
- Applicant was discharged on 7 April 1961. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-208, with Separation Program Number 28B (unfitness) and Reentry Code 3.
- Applicant petitioned the ABCMR requesting upgrade of his under honorable conditions (general) discharge. On 11 August 1982, the Board voted to deny relief and determined that the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

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, ABCMR Record of Proceedings (ROP), VA medical documentation, and documents from his service record and separation packet. 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.

d. The applicant states that while serving in the military he was suffering from depression and believes he was unable to comprehend his actions. He has continued to have anxiety attacks and depression. He has served with the American Legion in Plainville, CT, for 35 years. He has become a changed man and has helped many veterans.

e. No electronic medical records were available from his time in service, however, the applicant submitted hardcopy documentation. The record indicates on 28 January

1960, the applicant was admitted to the hospital after an apparent suicide attempt via overdose, "he was found sleepy and weak after sleeping all day and the medicine bottle was found empty". The attending physician diagnosed him with acute situational maladjustment characterized by resentment, depression, suicidal ideas, as well as decrease appetite and activity. The documentation indicates a depressive episode with symptoms such as "confused, angry, frightened, distant, hopeless, and has death wishes". However, on 1 March 1961, the applicant participated in a mental status evaluation while in confinement. The diagnostic impression was of a passive aggressive personality, poor impulse control, AWOLs, lack of adherence to the rules and regulations in the environmental situation to which he belongs. There was no evidence of a physical or mental defect, and he was able to distinguish right from wrong, adhere to the right, refrain from the wrong and to conduct or cooperate in his own defense. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

f. The applicant is 30% service connected for Dysthymic Disorder and the VA electronic medical records available for review, indicate the applicant had an inpatient hospitalization on 31 July 1995 where he was diagnosed with Alcohol dependence. Major depression disorder, and Generalized anxiety disorder. The applicant actively participated in treatment and, per documentation, had major insights into his process of escalating alcohol dependence as well as making emotional connections to his past. Specifically, he identified a history of being sexually molested as a young boy. Overall, the VA record indicates the applicant has a longstanding history of depressed mood and anxiety, alcohol use disorder in sustained remission and a history of childhood sexual abuse. He has participated in therapy intermittently, initially, following media reminders of his trauma, then after an episode of cardiac issues, and most recently related to bereavement.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health condition during military service that would mitigate his discharge.

#### 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 a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. There is evidence the applicant was psychiatrically hospitalized during his time in service following an apparent suicide attempt.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was separated from military service due to repeated AWOL's. Medical documentation provided by the applicant shows he was psychiatrically hospitalized due to a depressive episode and apparent suicide attempt. The applicant is 30% service connected for Dysthymic Disorder and VA electronic medical records indicate the applicant has been diagnosed with Major Depression Disorder and Generalized Anxiety Disorder. Given the nexus between depression/anxiety and avoidance, the applicant's incidents of AWOL are mitigated by his BH condition.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The evidence shows the applicant was discharged from active duty due to unfitness following two convictions by a special court-martial and multiple AWOLs. A board of officers convened and found sufficient evidence of unfitness within the meaning of AR 635-208, frequent incidents of a discreditable nature with military authorities, which rendered his retention in the service undesirable. The board of officers recommended a general discharge. The applicant was accordingly discharged with his service characterized as under honorable conditions. He completed 1 year, 8 months, and 16 days of net active service, with 175 days of lost time.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding sufficient evidence the applicant had a behavioral health condition during military service that would mitigate his discharge. Based on this mitigation, the Board determined an honorable discharge is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. Additionally, the Board determined the narrative reason for separation and corresponding separation and reentry code are neither in error nor unjust and thus should not change.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 7 April 1961 showing his character of service as Honorable:

- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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. 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 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.

4. Army Regulation 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.



6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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, 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//