

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230006879

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Armed Forces of the United States Report of transfer or Discharge)

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 AC81-10869 on 26 May 1982.

2. The applicant states:

a. He received an UOTHC due to an assault on him and not because he assaulted anyone. He was attacked, with a bottle and his throat was cut, by a former friend ██████ over a girl. He attempted to defend himself. When the Military Police arrived, they were both blamed and this was a mistake because he was trying to defend himself from ██████ who was bigger than him. The applicant ended up in the hospital due to assault and later both were in jail. ██████ requested discharge instead of court martial and the applicant requested court martial and was found guilty and then the applicant requested discharge which was approved. He was punished for something he did not do.

b. He got sick, and he suffers from post-traumatic stress disorder (PTSD). He was told he could never vote, and he has never voted in his life. He was told he could never work for civil service which meant he could never be a police officer. He has never had a job or high school diploma. He joined the Army instead and all his dreams got shot down. He was told to never go home. He was homeless and lived on skid row. He was both defeated and mentally exhausted. He became an alcoholic and drug user. He has

been in many recovery homes and homeless shelters. He has retired with an income from social security of \$980.00 per month. He has lived with this all his life.

3. The applicant enlisted in the Regular Army on 3 March 1971 for two years. His military occupational specialty was 31M (Radio Relay and Carrier Attendant).

4. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 19 October 1971, for absencing himself from his place of duty on or about 7 October 1971 until on or about 12 October 1971; his punishment consisted of forfeiture of \$35.00 per month for one month and extra duty
- 13 December 1971, for wrongfully possessing narcotic paraphernalia on or about 13 December 1971; his punishment consisted of forfeiture of \$45.00 per month for two months, extra duty, and restriction

5. The applicant's commander recommended approval of his request for a compassionate reassignment on 21 April 1972. His commander felt a compassionate reassignment, or at least a permissive reassignment, would alleviate a great deal of unnecessary mental strain on the applicant's mother and would enable the applicant to devote a larger amount of time and effort to his military duties without extreme (illegible) and concern about his familiar welfare.

6. The applicant accepted NJP under Article 15 of the UCMJ on 19 May 1972 for without authority, absencing himself from his appointed place of duty on or about 16 May 1972 until 16 May 1972. His punishment consisted of reduction to private 2/E-2 (suspended).

7. Before a summary court martial on 5 July 1972 the applicant was found guilty of being absent without leave (AWOL) from on or about 6 June 1972 until on or about 26 June 1972; and failure to obey a lawful order on or about 27 June 1972. The court sentenced him to reduction to private/E-1 and restriction. The sentence was approved on 7 July 1972 and would be duly executed.

8. Court-martial charges were preferred against the applicant for violations of the UCMJ on 24 July 1972. His DD Form 458 (Charge Sheet) shows he was charged with participating in a breach of the peace by wrongfully engaging in a fight in the barracks on or about 24 July 1972 and committing an assault upon Private [REDACTED] by striking him on the back with a means likely to produce grievous bodily harm: a metal club on or about 24 July 1972.

9. Before a special court martial on 21 August 1972 the applicant was found guilty of committing an assault upon Private [REDACTED] by striking him on the back with a means

likely to produce grievous bodily harm: a metal club on or about 24 July 1972. The court sentenced him to be confined at hard labor for 4 months, forfeiture of \$165.00 pay per month for 4 months, and reduction to private/E-1. On 13 September 1972, the sentence was disapproved, and the charges were dismissed.

10. The applicant consulted with legal counsel on 21 August 1972 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 undesirable discharge; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Separations), Paragraph 10, in lieu of trial by court-martial. 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an undesirable discharge.

b. He elected to submit a statement in his own behalf in which he stated the reasons for his requests was that he was supporting his family of seven. He was the man of the house. His family wanted him out of the service, and he wanted out of the service due to the critical situation at home. His mother was in poor health, his sister liked drugs, his younger brother shot a man, his other brother was in a reform school and his sister was on probation and attending family therapy.

11. The applicant's commander recommended approval and the issuance of an Undesirable Discharge Certificate (DA Form 258A) on 21 August 1972. His chain of command concurred with the recommendation and stated his actions were characterized by incidents of a discreditable nature, a court martial, two periods of AWOL and current charges. The commander considered the applicant to be ineffectual and a liability. The best interest of the service would be met by his immediate release.

12. The separation authority approved the applicant's request for discharge on 22 August 1972, for the good of the service in lieu of trial by court-martial with Separation Program Number (SPN) 246, and directed the issuance of an Undesirable Discharge Certificate.

13. A Report of Mental Status Evaluation, dated 23 August 1972, shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards. To the best of the

applicant's knowledge, there had been no change in his medical condition since his last separation examination on 23 August 1972.

14. The applicant was discharged on 25 August 1972. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10. His service was characterized as UOTHC. He completed 1 year, 4 months, and 22 days of net active service. He lost time from 6 October 1971 to 13 October 1971 and 6 June 1972 to 28 June 1972.

15. 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 Paragraph 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

16. On 11 April 1974 and 4 January 1979, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

17. On 26 May 1982, 12 October 1982, 14 March 1984, 25 July 1986, and 23 February 2000 the ABCMR determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice to warrant a formal hearing and denied his application.

18. On 12 October 2010, the ADRB determined the applicants request must be directed to the ABCMR for consideration.

19. On 24 March 2011, the ABCMR determined the reconsideration was the final administrative action taken by the Secretary of the Army and was not eligible for further reconsideration by the Board. therefore, his request was returned without action.

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

21. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous requests for upgrade of his under other than honorable conditions (UOTHC) discharge.

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 3 March 1971.

- Applicant's commander recommended approval of his request for a compassionate reassignment on 21 April 1972. His commander felt a compassionate reassignment, or at least a permissive reassignment, would alleviate a great deal of unnecessary mental strain on the applicant's mother and would enable the applicant to devote a larger amount of time and effort to his military duties without concern about his familiar welfare.
- Applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
  - 19 October 1971, for absenting himself from his place of duty on or about 7 October 1971 until on or about 12 October 1971.
  - 13 December 1971, for wrongfully possessing narcotic paraphernalia on or about 13 December 1971
  - 19 May 1972 for without authority, absenting himself from his appointed place of duty on or about 16 May 1972 until 16 May 1972.
- Before a summary court martial on 5 July 1972 the applicant was found guilty of being absent without leave (AWOL) from on or about 6 June 1972 until on or about 26 June 1972; and failure to obey a lawful order on or about 27 June 1972.
- Court-martial charges were preferred against the applicant for violations of the UCMJ on 24 July 1972. His DD Form 458 (Charge Sheet) shows he was charged with participating in a breach of the peace by wrongfully engaging in a fight in the barracks on or about 24 July 1972 and committing an assault upon Private ██████ by striking him on the back with a means likely to produce grievous bodily harm: a metal club on or about 24 July 1972.
- Before a special court martial on 21 August 1972 the applicant was found guilty of committing an assault upon Private ██████ by striking him on the back with a means likely to produce grievous bodily harm: a metal club on or about 24 July 1972. The court sentenced him to be confined at hard labor for 4 months.
- 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 Paragraph 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
- The separation authority approved the applicant's request for discharge on 22 August 1972, for the good of the service in lieu of trial by court-martial with Separation Program Number (SPN) 246 and directed the issuance of an Undesirable Discharge Certificate.
- Applicant was discharged on 25 August 1972. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10. He was assigned SPN 246 with Reenlistment Code 4. His service was characterized as UOTHC.

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 214, ABCMR Record of Proceedings (ROP), self-authored statement, character reference letter, and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed 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 he received an UOTHC due to an assault on him and not because he assaulted anyone. He was attacked, with a bottle and his throat was cut, by a former friend over a girl. He attempted to defend himself. When the Military Police arrived, they were both blamed and this was a mistake because he was trying to defend himself. The applicant states he ended up in the hospital due to the assault and both he and the other soldier were jailed. The other soldier requested discharge instead of court martial and the applicant requested court martial and was found guilty and then the applicant requested discharge which was approved. He was punished for something he did not do. He got sick, and he suffers from post-traumatic stress disorder (PTSD). He was told he could never vote, and he has never voted in his life. He was told he could never work for civil service which meant he could never be a police officer. He has never had a job or high school diploma. He joined the Army and all his dreams got shot down. He was told to never go home. He was homeless and lived on skid row. He was both defeated and mentally exhausted. He became an alcoholic and drug user. He has been in many recovery homes and homeless shelters. He has retired with an income from social security of \$980.00 per month. He has lived with this all his life.

e. Due to the period of service, no active-duty electronic medical records were available for review, however, the applicant submitted hardcopy medical documentation from his time in service. A Mental Status Evaluation for the purpose of separation, dated 23 August 1972, shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards. A Medical Examination for the purpose of separation, dated 23 August 1972, indicates the applicant denied any concerns related to depression, anxiety or sleep disturbance. The medical provider noted no significant medical concerns or disqualifying mental or physical deficits that warranted disposition via medical channels.

f. No VA electronic medical records were available for review and the applicant is not service connected. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD. A Board hearing, dated 19 September 1978, indicates the applicant alleged his instances of AWOL were related to familial issues. However, the Board found that with the exception of one AWOL, his

multiple AWOL's were not connected to his reported familial problems. The applicant provides a letter addressed to the [REDACTED] Court, dated 14 May 1999, from the Action Rehabilitation Center indicating the applicant completed a treatment program for alcoholism and related drug problems that required residential participation for 90 to 120 days.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. Regardless, it is unlikely any BH condition would mitigate his discharge due to assault by means likely to produce grievous bodily harm.

#### 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was provided a compassionate reassignment due to familial stressors.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts PTSD, he did not provide any medical documentation substantiating the diagnoses and did not provide a rationale for his contention. However, regardless of a diagnosis, PTSD would not mitigate assault by means likely to produce grievous bodily harm, assault is not a natural sequela of this BH condition and would not mitigate the reason for his discharge. In addition, PTSD does not impact the ability to distinguish right from wrong and act in accordance with the right.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation, some of which included violent behavior towards others, as well as the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/14/2024

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 10, 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.

2. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the 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 Service Discharge Review Boards (DRB) and Service 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 PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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//