

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230006909

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)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 April 1985

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:

a. He was subject to extreme mental and emotional duress by his immediate superior officer who repeatedly called him a racial slur while stationed in Korea during his discharge period. He was a driver for his battalion commander. He began to drink which led to him going absent without leave (AWOL) for several weeks.

b. He turned himself in to military authorities to retain his integrity and character. He served his country with honor and valor for 6 years and this ignominious blemish should not preclude and/or impede him from receiving all the resources that he is entitled, due to him being a victim of the climate of that time. He has not experienced any negative or adverse engagement with law enforcement and has been a model law abiding citizen for the past 35 years. This episode has caused him to be evaluated for post-traumatic stress disorder (PTSD), anxiety, and depression.

c. He notes PTSD and other mental health issues/conditions related to his request.

4. The applicant enlisted in the Regular Army on 25 September 1979. He reenlisted on 25 March 1982.
5. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Oversea Service): Korea from 26 October 1983 to 25 October 1984.
6. His DA Form 2-1 also shows in item 18 (Appointments and Reductions):
  - private (PVT)/E-1: 25 September 1979
  - private (PV2)/E-2: 25 March 1980
  - private first class (PFC)/E-3: 25 September 1980
  - specialist (SPC)/E-4: 9 September 1981
  - PFC/E-3: 13 December 1982
  - SPC/E-4: 1 March 1984
  - PFC/E-3: 21 August 1984
  - PVT/E-1: 2 April 1985
7. His record contains two DA Forms 4187 (Personnel Action), which show:
  - on 27 November 1984, duty status changed from assigned to AWOL
  - on 18 March 1985, duty status changed from dropped from rolls to attached
8. On 20 March 1985, the applicant declined to undergo a medical examination prior to his separation.
9. The applicant signed an admission of AWOL on 21 March 1985, wherein he knowingly, willingly, and voluntarily declared he was AWOL from 27 November 1984 to 18 March 1985.
10. His DD Form 458 (Charge Sheet), dated 21 March 1985, shows the applicant did on or about 27 November 1984 without authority absent himself from his organization located at Fort Knox, KY, and did remain so absent until on or about 18 March 1985.
11. On 22 March 1985, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a discharge under other than honorable conditions if this request was approved, and of the procedures and rights available to him. Following this consultation, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. He acknowledged:

- he was making this request of his own free will and had not been subjected to any coercion whatsoever by any person
- he understood the elements of the offense charged and he was guilty of the charge against him or of a lesser included offense which also authorized the imposition of a bad conduct or dishonorable discharge
- if his discharge request were 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
- he elected not to provide a statement

12. The applicant's immediate and intermediate commanders recommended approval of his request for discharge on 25 March 1985 and further recommended an under other than honorable conditions discharge.

13. On 2 April 1985, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an under other than honorable conditions discharge.

14. The applicant was discharged on 26 April 1985, under AR 635-200, Chapter 10. His DD Form 214 shows he completed 5 years, 3 months, and 11 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16), Expert Marksmanship Qualification Badge with Hand Grenade Bar, Overseas Service Ribbon, and NCO Professional Development Ribbon (Primary Level)
- item 24 (Character of Service): under other than honorable conditions
- item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial
- item 29 (Dates of Time Lost During this Period): 19841127-19850317

15. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

16. Regulatory guidance in effect at the time provided that a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

17. 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.

18. 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 was experiencing other mental health conditions including PTSD that mitigate his misconduct.

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 25 September 1979; 2) The applicant was AWOL from 27 November 1984 till 18 March 1985; 3) The applicant was discharged on 26 April 1985, Chapter 10, and his service was characterized as UOTHC.

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

d. The applicant noted other mental health conditions including PTSD as a contributing and mitigating factors in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing mental health conditions including PTSD that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions including PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL, which can be a sequelae to some mental health conditions including PTSD, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 PTSD claim and the review and conclusions of the ARBA BH 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 PTSD. 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. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

7/24/2024

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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 is missing required entries. Please correct the DD Form 214 by adding the following to block 18 (Remarks):

- Continuous honorable active service from 790925 to 820324
- Soldier has completed first full term of service

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), 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.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

3. 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 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.

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 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 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. 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. 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.

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 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.

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.

6. 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//