

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230007111

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- two statements of support, undated
- Patient summary, Saint Mary Behavioral Health Clinic, dated 25 July 2022
- letter, South Central Louisiana Human Services Authority, 4 January 2023
- letter, Prevention Plus, 12 January 2023

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 AC92-10458 on 10 February 1993.

2. As a new argument, the applicant states, in effect:

a. When he went absent without leave (AWOL), he was suffering from a deep depression caused by his traumatic childhood. He was molested by a family friend when he was around the age of 10 years old. He suffers every day thinking about it. His parents were always fighting. His father had a drinking problem and would beat his mother. They eventually divorced. He and his brothers lived with their father who would whip them when they did something wrong. It was very stressful. They frequently found places to sleep at friends' houses.

b. They had a rough time at school. They were afraid if they did something wrong, they would pay for it at home. Eventually, he was able to live with his mother. She could only find work in barrooms which left them home on their own. He started drinking around the age of 10 years old. He quit school after ninth grade because people made fun of him.

c. The drinking caught up with him at the age of 16. He had no job and no friends. He married a woman who got pregnant by another man, which added more depression. He was caught by the police for stealing. He was given the choice of going to jail or joining the Army. He joined the Army with his friend who was sent to Germany. He was stationed in Alaska. He was lost and found it hard to be around others when he acted out. He was a loner, suffered from anxiety, and did not trust others.

d. In 1993, he saw a doctor who diagnosed him with mental health conditions. He was hospitalized for depression. He continues to have issues with mental health and self-esteem. He still needs counseling; however, he hasn't had a beer for nine years. If he could change the things he did in the Army, he would. The applicant notes other mental health as a condition related to his request.

3. The applicant enlisted in the Regular Army on 26 May 1970, at the age of 17 years old, for a 3-year period. The highest rank he attained was specialist/E-4.

4. The applicant's commander initiated a report of suspension of favorable personnel action (FLAG) on 14 October 1971, by reason of the applicant's failure to return to duty from temporary duty at Fort Polk, LA, on that same date.

5. A DA Form 188 (Extract Copy of Morning Report), dated 12 November 1971, shows the applicant departed AWOL on 14 October 1971, and was subsequently dropped from the rolls of the organization on 12 November 1971.

6. The applicant underwent a mental status examination on 24 March 1972. The examining provider noted the applicant had a depressed mood. He was deemed mentally responsible and capable of understanding and participating in board proceedings.

7. A Standard Form 88 (Report of Medical Examination) dated 24 March 1972, shows the applicant reported being in good health and was determined physically qualified for discharge.

8. He consulted with legal counsel on 29 March 1972.

a. He 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 UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his

understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding 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 VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. In an attached statement, the applicant stated he had many problems at home, and he could not adjust to and cope with Army life.

10. Court-martial charges were preferred against the applicant on 7 April 1971, for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL, from on or about 14 July 1971 until on or about 30 September 1971, and from on or about 17 October 1971 until on or about 22 March 1972.

11. The applicant's immediate and intermediate commanders recommended approval of the request for discharge for the good of the service, further recommending the issuance of an undesirable discharge.

12. The separation authority approved the applicant's request for discharge for the good of the service on 25 April 1972, and further directed issuance of a DD Form 258A (Undesirable Discharge Certificate) and reduction to the lowest enlisted grade.

13. The applicant was discharged on 1 May 1972, under the provisions of Army Regulations 635-200, for the good of the service, in the rank/grade of private/E-1. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his character of service was UOTHC, with separation program number 246 and reenlistment code RE-4, 3B. He was credited with 1 year, 3 months, and 28 days of net active service, with 223 days of lost time from 14 July 1971 to 13 September 1971 and 14 October 1971 to 21 March 1972.

14. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 10 February 1993. After careful consideration, the Board determined the applicant did not provide sufficient justification to conclude it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law. His request for relief was denied.

15. The applicant provides the following:

a. In an undated statement of support, his wife states, in effect, the applicant suffers from depression, anxiety, and insomnia. He sees his family doctor and goes to St.

Mary's Mental Health for treatment of his conditions. He is depressed most of the time, has a hard time concentrating, focusing, sleeping, being around others, and talking on the phone.

b. In an additional statement of support, the applicant's granddaughter states, in effect, her grandfather is not himself. He is very distant and does not talk much. He has been depressed for a long time. He used to be so full of life and never had a sad face. He thinks no one cares for him now. He doesn't sleep well and worries about everything which she thinks is affecting him.

c. A patient summary, dated 27 July 2022, shows the applicant's medical history includes major depressive disorder, recurrent severe, without psychotic features; major depressive disorder, recurrent, moderate; and borderline intellectual functioning.

d. Two letters from South Central Louisiana Human Service Authority, dated 4 January 2023, and Prevention Plus, dated 12 January 2023, show the applicant has been receiving ongoing treatment for his diagnosed behavioral health conditions.

16. Discharges under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. A UOTHC characterization of service is normally considered appropriate.

17. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He asserts he was experiencing mental health conditions during his active service, which contributed to 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 into the Regular Army on 26 May 1970; 2) Court-martial charges were preferred against the applicant on 7 April 1971 for being AWOL from 14 July 1971-30 September 1971 and from 17 October 1971-22 March 1972; 3) The applicant was discharged on 1 May 1972, for the good of the service. His character of service was UOTHC; 4) The ABCMR reviewed and denied the applicant's petition for an upgrade of his discharge on 10 February 1993.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's

Joint Legacy Viewer (JLV) and civilian medical documentation provided by the applicant were also examined.

d. The applicant noted other mental health conditions as a contributing and mitigating factor in the circumstances that resulted in his misconduct. The applicant reported experiencing childhood trauma, which impacted his overall mental health at an early age. He described experiencing depression and alcohol abuse. During his enlistment, he reported an increase in his negative emotions, which resulted in his difficulty to adapt and eventually go AWOL. There is insufficient evidence the applicant was diagnosed or treated for a mental health condition, while on active service. However, on 24 March 1972, he did complete a Mental Status Examination as part of his separation proceedings. The applicant was noted to have a depressed mood, but he was found mentally responsible, capable of understanding, and participating in the board proceedings.

e. A review of JLV was void of medical documentation, and the applicant receives no service-connected disability. He did report being diagnosed with mental health conditions and hospitalized for depression in 1993. He provided a patient summary letter dated 27 July 2022, reporting a history of recurrent severe major depressive disorder and borderline intellectual functioning. He also provided two letters from South Central Louisiana Human Service Authority, dated 04 January 2023 and Prevention Plus, dated 12 January 2023. Again, he was reported to be experiencing severe recurrent major depressive disorder, borderline intellectual functioning, generalized anxiety disorder, and impaired memory.

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

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 he was experiencing severe depression that contributed to his misconduct. He was reported to be depressed while on active service. He later was diagnosed with depression, borderline intellectual functioning, anxiety, insomnia, and impaired memory.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing severe depression that contributed to his misconduct. He was reported to be depressed while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing a depression while on active service. There is evidence the applicant had a history of

depression prior to his enlistment due to his traumatic childhood, which was likely exasperated by his inability to adapt to the military. Avoidant behavior such as going AWOL is often a natural sequelae to depression, and it is likely the applicant's depressive symptoms noted during his active service and later diagnosed was a mitigating factor in his misconduct.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was partially warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct and the reason for separation. The Board found no clear or convincing evidence of an error or injustice and, in the absence of any new or relevant information, concluded that the burden of proof had not been met and a recommendation for relief is not warranted.

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 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 insufficient as a basis to amend the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC92-10458 on 10 February 1993.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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 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.

2. 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. Paragraph 3-7a provides 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.

c. Paragraph 3-7b provides 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.

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 Discharge Review Boards 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 (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 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. 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.



4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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//