

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230007124

APPLICANT REQUESTS: upgrade of the characterization of his service from under other than honorable conditions to honorable.

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)

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, in effect, while in the Army National Guard (ARNG) he received an honorable discharge; however, he was going through a mental break. Later, upon being stationed at Fort Riley, KS, he was intoxicated after a party when a Soldier tried to pull his pants down. They fought and he left, but the next day in formation, he threatened to tell everyone a different story. He didn't know what to do or who to talk to and he became depressed. One of his noncommissioned officers asked why his uniform was not up to standard. That's when he went on leave and didn't return for two weeks. He was arrested in [REDACTED] and returned of his own free will. He was asked if he wanted to stay or go home, he chose to go home. For years he has battled post-traumatic stress disorder (PTSD) because of this situation and having problems with authority. He subsequently found out the Soldier was finally caught raping another drunk Soldier.
3. The applicant completed honorable enlisted service in the Army National Guard before he enlisted in the Regular Army on 23 July 1999.

4. Evidence shows, on 24 September 1999, he was arrested and confined by civilian authorities for multiple traffic violations which resulted in lost time from 24 September to 3 October 1999.

5. On 22 March 2001, court-martial charges were preferred against him for being absent without leave from the U.S. Army from on or about 21 November 2000 to 15 March 2001.

6. His record does not indicate whether he whether he returned to military control voluntarily or he was apprehended.

7. On 22 March 2001 the applicant:

a. consulted with legal counsel, and he was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct or dishonorable discharge, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a request for discharge, and the procedures and rights available to him. Following consultation with legal counsel, he requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.

(1) In his request for discharge, he acknowledged he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He understood, in effect, by requesting a discharge he was admitting guilt to the charges against him or of lesser-included offenses that also authorized the imposition of a bad conduct discharge or a dishonorable discharge.

(2) He acknowledged he understood if his discharge request were approved, he may be deprived of many or all Army benefits. He acknowledged he may be ineligible for many, or all benefits administered by the Department of Veterans Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws. He stated that under no circumstances did he desire further rehabilitation or to perform further military service. He did not provide a statement on his own behalf.

b. completed an admission of AWOL, wherein he voluntarily declared he was AWOL from on or about 21 November 2000 to on or about 15 March 2001.

8. On 9 January 2002, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial in accordance with chapter 10 of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) and directed the

applicant be reduced to the rank/grade of private/E-1 and that he be issued an under other than honorable conditions discharge.

9. On 25 January 2002, the applicant was discharged. The DD Form 214 he was issued shows he was discharged in lieu of trial by court-martial under the provisions of chapter 10, Army Regulation 635-200 with an under other than honorable conditions characterization of service. He completed 2 years, 1 month, and 29 days of net active service during this period with lost time from 24 September to 3 October 1999 and 21 November 2000 to 14 March 2001. Additionally, he received a separation code of KFS and a reentry code of 4.

10. On 15 August 2023, the Director, Case Management Division, Army Review Boards Agency, requested the applicant provide copies of medical documentation which support his PTSD and depression issues. To date, the applicant has yet to respond.

11. There is no indication he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

13. 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. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

14. The Board should consider the applicant's statements and the evidence he provides in accordance with the 25 July 2018, Under Secretary of Defense for Personnel and Readiness guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations.

15. 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 had mental health conditions including PTSD that mitigated 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 completed honorable enlisted service in the Army National Guard before he enlisted in the regular Army on 23 July 1999; 2) On 22 March 2001, court-martial charges were preferred against him for being absent without leave from the U.S. Army from 21 November 2000 -15 March 2001; 3) On 25 January 2002, the applicant was discharged. The DD Form 214 he was issued shows he was discharged in lieu of trial

by court-martial under the provisions of chapter 10, Army Regulation 635-200 with an under other than honorable conditions characterization of service.

c. The Army Review Board 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 mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. There was insufficient evidence the applicant reported mental health symptoms while on active service. A review of JLV was void of medical documentation. The applicant has not been diagnosed with a service-connected mental health condition and receives no service-connected disability.

e. Based on the available information, it is the opinion of the ARBA BH Advisor that there is insufficient evidence to support the applicant had a 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 a mental health condition including PTSD while on active service. The applicant did go AWOL, which can be a sequela 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 mental health conditions or an experience that mitigated 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, 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.

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.

5/6/2024

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

a. Chapter 10 of the 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. 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 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.

3. 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, 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.

4. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 contains guidance on the burden of proof. It states, in pertinent part, that the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

b. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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//