

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230007241

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 20 March 1972
- Selective Service Center Letter, Subject: Presidential Clemency Program, dated 9 March 1976
- Clemency Discharge Certificate, dated 16 September 1974
- DD Form 215 (Correction to DD Form 214), dated 3 May 1976
- Department of the Army Notification Letter, dated 19 May 1976
- DD Form 293 (Application for Review of Discharge or Separation), dated 28 January 1981

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 he received clemency. He was assaulted and found innocent. He is not sure of the dates, but the assault happened in Texas. He annotated sexual assault/harassment as an issue/condition related to his request.
3. The applicant provides:
 - a. A letter from the Selective Service System of California, dated 9 March 1976, which shows he had successfully completed his agreement to do alternate service in the President's Clemency Program and his time had ended on 8 March 1976.

b. A Clemency Discharge Certificate from the Armed Forces of the United States, showing he was discharged from the U.S. Army on 20 March 1972

c. A DD Form 215 correction to add "DD 1953A Clemency Completion of Alternate Proclamation AO 4113 Discharge Issued in Recognition of Satisfactory Service Pursuant to Presidential Proclamation No 4313."

d. A Department of the Army Notification Letter, dated 19 May 1976, informing the applicant of his rights to apply to the Army Discharge Review Board (ADRB) for a possible change in his discharge.

e. A DD Form 293 to the ADRB, dated 28 January 1981, requesting a review for an upgrade of his discharge.

4. The applicant enlisted in the Regular Army on 10 July 1969.

5. On 7 February 1972, court-martial charges were preferred on the applicant for violation of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) reflects:

a. Specification 1: the applicant did on or about 26 October 1970, without authority, absent himself from his organization, U.S. Army Overseas Replacement Station located at Oakland, CA, and did so remain absent until on or about 2 November 1970.

b. Specification 2: the applicant did on or about 5 November 1970, without authority, absent himself from his organization, U.S. Army Overseas Replacement Station located at Oakland, CA, and did so remain absent until on or about 7 February 1972.

6. On 1 March 1972, 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 UCMJ, 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:

a. He was making this request of his own free will and had not been subjected to any coercion whatsoever by any person.

b. He understood that 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.

c. He elected to submit a statement in his own behalf in which is stated, he joined the Army when his wife left him. They got back together and after being in the Army for 4 months, he went absent without leave (AWOL) for one month. He turned himself in at Oakland Army Base and they sent him to Fort Sam Houston, TX. He then went AWOL for a year and a half. He only turned himself in because his wife was pregnant and was worried about him. The baby came too soon and died. He knew his wife should not be left alone. He had no intention of returning to duty ever again. All he wanted was out of the Army, for good. He knows he will get an undesirable discharge, but he does not care about that. He just wants out.

7. The applicant's immediate and intermediate commanders recommended approval of his request for discharge for the good of the service on 3 March and 8 March 1972, and further recommended an Undesirable Discharge Certificate.

8. On 15 March 1972, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 and directed the issuance of an Undesirable Discharge Certificate and the applicant's immediate reduction to private/E-1.

9. The applicant was discharged on 20 March 1972, under AR 635-200, Chapter 10. His DD Form 214, as amended by his DD Form 215, shows he completed 1 year, 5 months, and 3 days of active service with lost time from 5 November to 6 February 1972. It also shows in:

- item 11c (Reason and Authority): Chapter 10, AR 635-200, SPN 246
- item 13a (Character of Service): under other than honorable conditions
- item 15 (Reenlistment Code): RE-3B
- item 30 (Remarks): DD 1953A Clemency Discharge Issued in Recognition of Satisfactory Completion of Alternate Service Pursuant to Presidential Proclamation No 4313

10. The applicant petitioned the ADRB for an upgrade of his service characterization. The ADRB considered his request on 25 March 1982, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

11. By regulation, an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

12. 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.

13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS), and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Under Other Than Honorable Conditions to either Under Honorable Conditions, General or Honorable. He indicated that Sexual Assault/Harassment was related to his request. His request was denied by the Army Discharge Review Board in 1982.

b. The applicant's available record and known circumstances surrounding his discharge were summarized in the ABCMR ROP. The applicant entered the Regular Army 01Jul1969. His MOS was Equipment Storage Specialist. He was discharged 20Mar1972 under provisions of AR 635-200 chapter 10 for the good of the service in lieu of trial by court-martial. The charge sheet showed he was AWOL 26Oct1970 to 02Nov1970 and 05Nov1970 to 06Feb1972. His service was characterized as Under Other Than Honorable Conditions. He completed alternate service (pursuant to Presidential Proclamation No 4313) and received a correction on DD 215 for clemency discharge dated 03May1976.

c. There were no service treatment records that were available for direct review. The Army Discharge Review Board proceedings in 1982 indicated a 26Feb1971 psychiatric evaluation by a civilian psychiatrist yielded diagnosis Passive Dependent Personality and a 09Feb1972 separation physical found him psychiatrically normal and qualified for separation. Neither of these evaluations were available for direct review. In his 01Mar1972 personal statement, the applicant explained that his AWOL instances were due to partner/family relationship circumstances. In his 2023 ABCMR application, he implied that Sexual Assault/Harassment in Texas was related to the reason for his discharge. He did not give any further details.

d. JLV search did not yield any records for the applicant in that system. The 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017

Clarifying Guidance were considered. Although review of records did not yield a BH diagnosis, the applicant claims a sexual assault occurred in Texas. Per ARBA policy the applicant's self-assertion of MST is treated as if it was diagnosed while in service. Recommend discharge upgrade to Honorable and change in narrative reason for discharge to Secretarial Authority.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? As per ARBA policy, the applicant's self-assertion of MST is sufficient to affirm its existence; and MST is a mitigating BH experience.

(2) Did the condition exist, or did the experience occur during military service? As per ARBA policy, the applicant's self-assertion of MST as reported to be due to in-service trauma, is sufficient to affirm its existence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? As per ARBA policy, the applicant's self-assertion of MST is sufficient to mitigate the discharge due to AWOL offence.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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.

2. The Board reviewed and concurred with the medical advisor's review; however, noted the applicant provided no documentation for consideration by the Board except for the applicant's self-assertion. The Board determined that an upgrade to the applicant's characterization of service was not warranted and there was no error or injustice in the separation processing of the applicant.

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.

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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. 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 (Personnel Separation-Enlisted Personnel) in effect at the time, prescribed policies, and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge): An honorable discharge was a separation with honor, commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and the Manual for Court-Martial, United States 1969 (Revised Edition), included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred; commanders had to insure no one coerced the Soldier into submitting a request for discharge and that the Soldier had a reasonable amount of time to consult with counsel. If, after consulting with counsel, the Soldier chose to submit a separation request, he/she had to do so in writing, and the Soldier's counsel had to sign as a witness. Once the separation authority approved the Soldier's discharge request, an undesirable discharge was normally furnished, but the separation authority could direct either an honorable or a general discharge, if warranted.

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//