

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230007430

APPLICANT REQUESTS: an upgrade to his discharge from under other than honorable conditions (UOTHC) to general, due to other mental health conditions.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record), dated 5 May 2023

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code, section 1552(b); however, the 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 wants his discharge upgraded to under honorable conditions (general) due to his current medical conditions and other mental health issues.

3. A review of the applicant's service record reflects the following documents:

a. He has prior military service in the Mississippi Army National Guard (MSARNG). His DA Form 2-1 (Personnel Qualification Record) shows he had prior military service from 17 March 1989 to 2 December 1993 in the MSARNG. On 20 January 1995, he reenlisted in the MSARNG and was honorable discharged on 9 March 1998.

b. DD Form 4 (Enlistment/Reenlistment Document), shows he enlisted in the Regular Army on 10 March 1998 and reenlisted on 10 March 2000 in the rank/grade of specialist (SPC)/E-4.

c. DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG), dated 12 June 2000, shows the applicant received a FLAG for adverse actions.

d. DD Form 458 (Charge Sheet), dated 21 February 2001, shows the applicant, in the rank of SPC/E-4 was pending court-martial charges for two specifications of assault and battery on another Soldier by striking them in the face and for stabbing them in the neck with a means likely to produce death or grievous bodily harm with a key, and for disorderly conduct on or about 7 June 2000.

e. On 2 March 2001, the applicant submitted a voluntary request for discharge in lieu of trial by court-martial, pursuant to Army Regulation 635-200 (Personnel Separations), Chapter 10. He was afforded and acknowledged all of his rights. Memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial, dated 9 March 2001, reflects his command recommended the applicant's request for separation in lieu of trial by court-martial be approved.

f. On 9 March 2001, the applicant's request for separation in lieu of trial by court-martial was approved. He was directed to be separated from service under the provisions of Army Regulation 635-200, Chapter 10, with an UOTHC discharge and administratively reduced to E-1.

g. DD Form 214 for the period ending on 9 April 2001, shows he was discharged under the provisions of chapter 10 (in lieu of trial by court-martial) of AR 635-200 with an under other than honorable conditions characterization of service (Separation Code KFS, Reentry Code 4). He completed 3 years and 1 month of net active service this period, and 4 months and 15 days of total prior active service. His DD Form 214 shows

(1) He was awarded or authorized Army Reserve Components Achievement Medal, National Defense Service Medal, Army Service Ribbon, Marksman Marksmanship Badge with Rifle Bar.

(2) The Remarks block reflects his reenlistment and continuous honorable service, as well as completion of his first term of service.

4. On 24 June 2005, the applicant submitted a request to the Army Discharge Review Board requesting an upgrade to his UOTHC discharge. The Board denied his request. The Board carefully examined his record of service during the period of enlistment under review and his prior honorable military service. However, the Board did not find sufficient mitigating evidence to warrant an upgrade to his discharge.

5. MEDICAL REVIEW:

a. The applicant requests an upgrade of his UOTHC discharge to under honorable conditions, general. He contends his request is related to other mental health conditions.

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 he enlisted in the Regular Army on 10 March 1998 and reenlisted on 10 March 2000; 2) DD Form 458 (Charge Sheet), dated 21 February 2001, shows the applicant, in the rank of SPC/E-4 was pending court-martial charges two specifications of assault and battery on another Soldier by striking them in the face and for stabbing them in the neck with a means likely to produce death or grievous bodily harm with a key, and for disorderly conduct on or about 7 June 2000; 3) On 2 March 2001, the applicant submitted a

voluntary request for discharge in lieu of trial by court-martial, pursuant to Army Regulation 635-200, Chapter 10; 4) On 9 March 2001, the applicant's request for separation in lieu of trial by court-martial was approved. He was directed to be separated from service under the provisions of Army Regulation 635-200, Chapter 10, with an UOTHC discharge.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not use during the applicant's time in service. No military BH-related records were provided for review. A review of JVL shows the applicant zero percent SC for Intervertebral Disc Syndrome. The applicant does not have a BH-related SC disability. Records shows the applicant engaged the VA for BH-related treatment on 15 June 2021 whereby he reported depressed mood secondary to chronic back pain that had worsen over the past 3-years. He complained of being physically limited from doing things he enjoyed, difficulty standing, decreased energy, poor sleep, and some anxiety. He was diagnosed with Mood Disorder Secondary to a General Medical Condition, underwent medication reconciliation, and scheduled for outpatient treatment. Records show the applicant engaged, routinely, in outpatient treatment for Mood Disorder Secondary to General Medical Condition through January 2023. Records shows the applicant diagnosis was amended in February 2023, when assigned to a new provider, to reflect MDD recurrent severe, and Alcohol Use Disorder in Remission. Reported symptoms were related to chronic pain, loss of family members, and difficulty in interpersonal relationships. The applicant was continued on psychotropic medication and scheduled to continue outpatient BH care. Records show the applicant continues to receive BH outpatient care to date.

d. The applicant is requesting an upgrade of his UOTHC discharge to honorable. He contends his request is related to his current medical condition and Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant with zero percent SC for Intervertebral Disc Syndrome, but he is not SC for a BH disability. Post service records also show the applicant was diagnosed with Mood Disorder Secondary to Chronic Pain in 2021 and MDD severe recurrent in 2023 - also related to pain secondary chronic pain, and other psychosocial circumstances proximal to the MDD diagnosis. Although the applicant has a SC physical condition, he does not have a SC BH condition. A review of the records is void of the applicant having any BH-related experience or condition, during service, that would mitigate his misconduct characterized by assault and battery and stabbing an individual with a means likely to cause death or grievous bodily harm. In absence of evidence supporting a BH-related condition or experience during service, there is insufficient evidence to support an upgrade based on BH medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. However, he contends his current

request for upgrade is related to Other Mental Health Issues, and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

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 his request for upgrade is related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history during service. Post-service records show the applicant with zero percent SC for Intervertebral Disc Syndrome, but he is not SC for a BH disability. Post service records also show the applicant was diagnosed with Mood Disorder Secondary to Chronic Pain in 2021 and MDD severe recurrent in 2023 - also related to pain secondary chronic pain, and other psychosocial circumstances proximal to the MDD diagnosis. Although the applicant has a SC physical condition, he does not have a SC BH condition. A review of the records is void of the applicant having any BH-related experience or condition, during service, that would mitigate his misconduct characterized by assault and battery and stabbing an individual with a means likely to cause death or grievous bodily harm. In absence of evidence supporting a BH-related condition or experience during service, there is insufficient evidence to support an upgrade based on BH medical mitigation.

BOARD DISCUSSION:

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. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense (assault) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence that the applicant had an experience or condition during his time in service that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that 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.



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 Army Board for Correction of Military Records (ABCMR) determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. 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.

a. Paragraph 3-7a provides an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b provides a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

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 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 (TBI), 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 regarding equity, injustice or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence and BCMRs 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 discharge, which may be warranted on equity or relief from injustice grounds. The 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, an injustice, or clemency grounds, BCMRs shall consider the twelve stated principles in the guidance as well as eighteen individual factors related to an applicant. These factors include the severity of the misconduct and the length of time since the misconduct.

6. Title 10, U.S. Code, section 1556 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//