

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007522

APPLICANT REQUESTS:

- Reconsideration of his prior denial of an upgrade of his under other than honorable conditions (UOTHC)
- A personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge) in lieu of the DD Form 149
- DD Form 214 (Report of Separation from Active Duty)
- Two personal statements previously submitted
- Six 3rd party statements previously submitted
- Three new Letters of reference/character
- University of Virginia (UVA) Department of Psychiatry and Neurobehavioral Sciences statement

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 AR20190002050 on 15 July 2021.

2. The applicant states he did not understand the Uniform Code of Military Justice (UCMJ) and code of conduct. He had been locked up in Norfolk, VA for a crime of larceny. After spending time in the lock up he was transported to Fort Bragg, NC where he was discharged with a UOTHC based on the days lost trying to fight his civil case and clear his record. When his command asked if he wanted to go home, he stated he did and was release from the Army. In his lengthy statement he outlines his service, the death of his wife and his efforts and action

3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health conditions as contributing and mitigating factors in the

circumstances that resulted in his separation. However, the applicant has not provided any official documentation to support the diagnosis of PTSD.

4. The National Archives and Records Administration (NARA), who are the custodian of former servicemembers records indicated that the applicant's records are charged out and not available. The only official documents currently available are the DD Form 214, provided by the applicant, and the prior ABCMR decisional document.

5. The applicant enlisted in the Regular Army on 10 May 1977, for 3 years, completed training with award of the military occupational specialty 64C (Motor Transport Operator). The highest grade he held was E-2.

6. He was reported absent without leave (AWOL) on 22 March 1978, dropped from the rolls (DFR) on 22 April 1978. His status was changed to confinement by civil authorities (CMA) on 9 August 1978 and returned to military control (RMA) on 7 December 1978.

7. The applicant was discharged on 16 January 1979, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, with Separation Program Designator of JES (in lieu of trial by court-martial). The DD Form 214 shows he was discharged in pay grade E-1 with a UOTHC. He completed 1 year, 3 months, and 3 days of net active service this period, with 137 days of time lost due to AWOL and 33 days of excess leave. His awards are listed as only the Marksman Qualification Badge with Rifle Bar (M-16).

8. The ABCMR denied the applicant's prior request on 15 July 2021. The service records, Orders Number 7-13 and the Department of Veterans Affairs medical record noted on the decisional document are not associated with document.

a. An Army Review Boards Agency staff medical review was received that outlined the review of the applicant's contentions, available service medical record, VA treatment records/decisions, and private medical treatment records.

b. The reviewing official indicated there was no documentation to support a psychiatric diagnosis at the time of his discharge. The applicant met retention standards at the time of his discharge. There is no documented psychiatric condition to consider with respect to mitigation of the misconduct that led to his discharge.

9. The applicant provided:

a. A statement from the UVA health system, dated 17 March 2021, the attending physician stated he believed the most appropriate diagnosis was delusional disorder paranoid type. His paranoia, ideas of reference, and aggression are responsive to antipsychotic medications. The mood stabilizer Depakote appears to decrease

impulsivity and the SSRI has had no apparent defect. His disturbances of mood and behavior do not appear to be secondary to alcohol or drug use. His symptoms are exacerbated by any situation in which he asked to come in to sustained contact with other individuals. This renders him disabled for most if not all implement purposes. The natural course of delusional disorder paranoid type is chronic in nature. Some patients do not respond to medication treatment. Other patients lack insight into the condition and become non adherent to medications leading to relapse or exacerbation of symptoms.

b. The applicant provided three third party statements, not previously reviewed, from friends who have known him for many years. They describe him as a straight forward before entering the service and that he was significantly changed after his discharge and suffering from mental problems. He has sought care and therapy and is now a kind, down to earth fellow of strong faith. He matured a lot and has reconnected with his wife and children after 10 years of estrangement.

10. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to 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.

11. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance

12. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. The applicant asserts PTSD and other mental health condition mitigates his discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 10 May 1977.
- The National Archives and Records Administration (NARA), who are the custodian of former servicemembers records indicated that the applicant's records are charged out and not available.
- The available record is void of the applicant's separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

- Applicant was reported absent without leave on 22 March 1978, dropped from the rolls on 22 April 1978. His status was changed to confinement by civil authorities (larceny, per applicant) on 9 August 1978 and returned to military control on 7 December 1978.
- Applicant was discharged on 16 January 1979, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, with Separation Program Designator of JES (in lieu of trial by court-martial). The DD Form 214 shows he was discharged in pay grade E-1 with a UOTHC.
- ABCMR denied the applicant's prior request on 15 July 2021.

b. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, DD Form 214, self-authored statement, character reference letters, ABCMR Record of Proceedings (ROP), medical document, and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant states he did not understand the UCMJ and code of conduct. He had been locked up in Norfolk, VA for a crime of larceny. After spending time in the lock up he was transported to Fort Bragg, NC where he was discharged with a UOTHC based on the days lost trying to fight his civil case and clear his record. When his command asked if he wanted to go home, he stated he did and was release from the Army. In his lengthy statement he outlines his service, the death of his wife and his efforts and action.

d. Due to the period of service, no active-duty electronic medical records were available for review. No VA electronic record was available for review and the applicant is not service connected. The applicant submitted a letter from a medical provider that states he initially sought services on 24 July 2019, four decades post-military service, related to complaints of anger and aggression. The applicant is diagnosed with Delusional Disorder, paranoid type, and the provider states his disturbances of mood and behavior does not appear to be secondary to his alcohol or drug use, since the applicant has an extensive history.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor there is insufficient evidence to support the applicant had a behavioral health diagnosis during military service. Regardless, without the specific facts and circumstances regarding the applicant's discharge, this advisor is unable to opine regarding mitigation based on a BH condition.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserts PTSD and other mental health condition on his application. However, there is no evidence of an in-service behavioral health diagnosis.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The available record is void of the applicant's separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing. This limits the medical advisor's ability to opine regarding medical mitigation. However, the available record indicates there is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD and other mental health condition on his application, the available medical documentation indicates the applicant initially sought behavioral health services over four decades post-military service. In addition, the applicant is not diagnosed with PTSD and the stressor incident he described of performing his duty of unloading a missile from a military tractor, would not meet criteria for PTSD. The medical documentation the applicant submitted indicates he had a history of alcohol and substance abuse and initiated treatment for complaints of anger and aggression in 2019. The medical provider describes that his BH condition responds well to medication and occurred post-military service. However, per Liberal Consideration the applicant's assertion of PTSD and other mental health warrants consideration by the board.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 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 considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical reviewer’s finding insufficient evidence to support the applicant had a behavioral health diagnosis during military service. 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:

<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 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 of the ABCMR set forth in Docket Number AR20190002050 on 15 July 2021.

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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, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR if the decision has not previously been reconsidered. The applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate. ==== At the time of the

applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 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 a discharge, which may be warranted on equity or relief from injustice grounds.

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//