

IN THE CASE OF: ██████████

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230007564

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

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

- DD Form 149 (Application for Correction of Military Record)
- Administrative Law Judge (ALJ) Bench Decision Check Sheet, dated 19 May 2005

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 AR2003084866 on 8 May 2003.

2. The applicant states, in effect, he requires an upgrade to apply for mental disabilities compensation from the Department of Veterans Affairs. He notes "other mental health" as a condition related to his request.

3. The applicant enlisted in the Regular Army on 5 October 1983. Upon the completion of his initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.

4. Four DA Forms 4187 (Personnel Actions) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 10 December 1984
- AWOL to PDY on 12 December 1984
- PDY to AWOL on 17 December 1984
- AWOL to PDY on 20 December 1984

5. A DA Form 258 (Report for Suspension of Favorable Personnel Actions) was initiated by the applicant's commander on 9 April 1985 by reason of AWOL.

6. Three additional DA Forms 4187 show the following changes in the applicant's duty status:

- PDY to AWOL on 9 April 1983
- AWOL to Dropped from Rolls (DFR) on 8 May 1985
- DFR to Attached on 3 June 1985

7. The applicant consulted with legal counsel on 9 July 1985.

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 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 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 Veteran's Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

8. On that same date, the applicant's immediate commander recommended approval of his request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge.

9. Court-martial charges were preferred against the applicant on 11 July 1985 for violations of the Uniform Code of Military Justice. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 9 April 1985 until on or about 3 June 1985.

10. The applicant's intermediate commanders recommended approval of the request for discharge for the good of the service and further recommended the issuance of an UOTHC discharge.

11. The separation authority approved the applicant's request for discharge on 19 July 1985. He directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 794A (UOTHC Discharge Certificate).

12. Accordingly, the applicant was discharged on 25 July 1985, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC. He was credited with 1 year, 7 month, and 23 days of net active service this period, with lost time from 10 December 1984 to 11 December 1984, 17 December 1984 to 19 December 1984, and 9 April 1985 to 2 June 1985.

13. The Army Discharge Review Board considered the applicant's request for an upgrade of his UOTHC characterization of service on or about 16 September 1988. After careful consideration, the Board determined that he was properly and equitably discharged. The Board denied his request.

14. The ABCMR reviewed the applicant's request to upgrade his characterization of service on 8 May 2003. After careful consideration, the Board determined there was insufficient evidence of an error or injustice which would warrant a change to his characterization of service. The Board denied his request.

15. As new evidence the applicant provides an ALJ Bench Decision Check Sheet, dated 19 May 2005, which notes the applicant's severe impairments include "herniated disc, schizophrenia, and bipolar problems."

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

17. The Board should consider the applicant's overall record 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 contends he had mental health conditions 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 was enlisted in the Regular Army on 5 October 1983; 2) The applicant was

found AWOL multiple times between 10 December 1984-3 June 1985; 3) The applicant was discharged on 25 July 1985, Chapter 10, for the good of the service. His service was characterized as under other than honorable conditions; 4) The Army Discharge Review Board considered and denied the applicant's request for an upgrade on 16 September 1988; 5) The ABCMR reviewed and denied the applicant's request to upgrade his characterization of service on 8 May 2003.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) and additional medical documentation provided by the applicant were also examined.

d. The applicant noted mental health conditions as contributing and mitigating factors in the circumstances that resulted in his separation. There was no indication the applicant reported mental health symptoms while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive service-connected disability. The applicant did provide an ALJ Bench Decision Check Sheet dated 19 May 2005. The applicant was reported to be experiencing schizophrenia and bipolar problems with an onset 1 March 2000.

e. Based on the available information, it is the opinion of the Agency 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 that contributed to his misconduct. He did provide paperwork that he was diagnosed with schizophrenia and "bipolar problems" with an onset in 2000.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing mental health conditions 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 while on active service. He did provide paperwork that he was diagnosed with mental health conditions decades after his discharge. The applicant did go AWOL, which can be a sequela to some mental health conditions, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition 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, supporting documents, 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 mental health 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 there being insufficient evidence to establish that his misconduct was mitigated by a mental health condition. 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR2003084866 on 8 May 2003.

6/4/2024

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. 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. 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 (DRB) 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; 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.

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