

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230007577

APPLICANT REQUESTS: the daughter of the deceased former service member (FSM), requests upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- FSM's certificate of death
- Applicant's birth certificate

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 her father received the National Defense Service Medal in his eight months of service. He was a great military vehicle mechanic. He passed away recently, and she would love to get him in a Veterans Administration (VA) cemetery. The FSM had some mental health issues that were later discovered.
3. On the DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to the request.
4. On 17 September 1969, the FSM enlisted in the Regular Army for 3 years. Upon completion of training, he was awarded military occupational specialty 63C (Truck Vehicle Mechanic).
5. On 16 May 1970, the FSM was reported as absent without leave (AWOL) and remained absent until he was apprehended on 28 January 1971.
6. On 1 February 1971, the FSM underwent a medical examination. He was deemed medically qualified for administrative separation.

7. Court-martial charges were preferred against the FSM on 3 February 1971, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 16 May 1970, until on or about 28 January 1971.

8. The FSM consulted with legal counsel on 3 February 1971, 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 an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the FSM voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He declined to submit a statement in his own behalf.

9. On 11 February 1971, the FSM's commander recommended approval of the FSM's request for discharge in lieu of court-martial, and further recommended the issuance of an undesirable discharge.

10. Consistent with the chain of command's recommendations, the separation authority approved the FSM's request for discharge on 24 February 1971. He further directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

11. The FSM was discharged on 24 February 1971. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (for the good of the service). He was assigned Reentry Codes 3, 3B, and 3C. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 8 months and 19 days of net active service this period with 258 days of lost time.

12. The FSM 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 Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

13. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and the FSM's service record in accordance with the published equity, injustice, or clemency guidance.

14. MEDICAL REVIEW:

a. Background: The daughter of the deceased former service member (FSM), requests upgrade of her father's under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

b. 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:

- The former service member (FSM) enlisted in the RA on 17 September 1969.
- On 16 May 1970, the FSM was reported as absent without leave (AWOL) and remained absent until he was apprehended on 28 January 1971.
- Court-martial charges were preferred against the FSM on 3 February 1971, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 16 May 1970, until on or about 28 January 1971.
- The FSM was discharged on 24 February 1971. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with Separation Program Number 246 (for the good of the service). He was assigned Reentry Codes 3, 3B, and 3C. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, his ABCMR Record of Proceedings (ROP), 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.

d. The FSM's daughter states her father received the National Defense Service Medal in his eight months of service. He was a great military vehicle mechanic. He passed away recently, and she would love to get him in a Veterans Administration (VA) cemetery. The FSM had some mental health issues that were later discovered.

e. Due to the period of service, no active-duty electronic medical records were available for review. On 1 February 1971, the FSM underwent a medical examination.

He was deemed medically qualified for administrative separation and no psychiatric concerns were noted.

f. No VA electronic medical records were available for review and the FSM is not service connected. In addition, the applicant did not submit any medical documentation post-military service substantiating her assertion that her father had mental health issues or her selection of PTSD on the completed application.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the FSM had a behavioral health diagnosis that mitigates his discharge.

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 selected post-traumatic stress disorder (PTSD) as related to the request.

(2) Did the condition exist or experience occur during military service? No. There is no evidence of any condition or experience during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the former service member for any BH condition. And while the applicant asserts her father had a mental health condition, she did not provide any medical documentation substantiating any diagnoses. However, the Board may consider granting the former service member clemency since his misconduct occurred over fifty years ago and did not involve violence, bodily harm, or major crimes.

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 former service member's (FSM) record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, the FSM's available military records and the medical review, the Board concurred with the advising official finding insufficient evidence of any mitigating BH condition. The opine found no evidence of any in-service

BH diagnoses, and the VA has not service-connected the former service member for any BH condition. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL for a period of 258 days.

2. The applicant provided no post service achievement of the FSM or character letters of support attesting to the FSM honorable conduct that might have mitigated the FSM discharge and the Board to weigh as clemency. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

3. This board is not an investigative body. The Board determined despite the absence of the former service member’s (FSM) medical records, they agreed the burden of proof rest on the applicant, however, she did not provide any supporting documentation and the former service member’s service record has insufficient evidence to support the FSM had behavioral health concerns.

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.

3/4/2024

X

[REDACTED]

CHAIRPERSON

[REDACTED]

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. 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the 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.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

6. 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//