

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007717

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), for the period ending 16 April 1975
- DD Form 214, for the period ending 22 March 1977
- DVD cover photo and series summary, Roots, undated

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 AC97-09642 on 19 August 1998.
2. The applicant states, in effect, while he was stationed at Fort Campbell, KY, he went with a friend to Jackson, TN. Every day he watched the television series "Roots." When his friend told him the Military Police were coming to get him, he returned to base. Upon his return, he asked for a transfer to another unit due to racism. His transfer was denied. His mind was confused about what he witnessed on the television series "Roots." He asked for an early discharge. An attorney told him he would receive a general discharge. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant honorably served in the U.S. Air Force from 9 April 1971 to 16 April 1975. His primary specialty was 81250A (Law Enforcement Specialist). The highest rank he attained was sergeant/E-4.
4. The applicant enlisted in the Regular Army on 20 May 1975 for a 3-year period, in the grade of E-4. Upon completion of advanced individual training, he was awarded military occupational specialty 67Y (Helicopter Repairman)..

5. The applicant's commander initiated nonjudicial punishment against the applicant, under the provisions of Article 15 of the Uniform Code of Military Justice, on 28 December 1976, for three specifications of failure to go at the time prescribed to his appointed place duty, between 7 December 1976 and 23 December 1976. The applicant demanded a trial by court-martial in lieu of the Article 15.

6. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 11 January 1977
- AWOL to Dropped from Rolls (DFR) on 13 January 1977
- AWOL to PDY on 8 February 1977

7. Court-martial charges were preferred against the applicant on 9 February 1977 and 23 February 1977 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) is not available for review.

8. The applicant underwent a mental status evaluation on 14 February 1977. The examining provider noted the applicant was aggressive and confused; however, there was no impression of mental illness. The applicant was able to distinguish right from wrong and he was cleared to participate in board proceedings.

9. On that same date, the applicant underwent a pre-separation medical evaluation. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Evaluation) shows the applicant reported being in good health. He was deemed medically qualified for separation.

10. The applicant consulted with legal counsel.

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, for the good of the service. 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 (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. The applicant provided a statement, wherein he stated, in effect, he served honorably in the U.S. Air Force for four years. He joined the Army with the career goal of being a Nuclear Weapons Specialist. He attended school at Redstone Arsenal where he was told he received a poor security check and could not continue school. He appealed the determination and requested a full investigation. To his knowledge, no action was taken on his appeal. The incident served as a touch stone to his present problem. It had an impact on his attitude. If granted a discharge, he is confident he will become a productive citizen.

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

12. The separation authority approved the applicant's request for discharge on 17 March 1977 and further directed the applicant be reduced to the lowest enlisted grade and the issuance of a UOTHC discharge.

13. Accordingly, the applicant was discharged on 22 March 1977, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his service was characterized as UOTHC, with separation code JFS and reenlistment code 3B. He was credited with 1 year, 9 months, and 3 days of net active service this period, with lost time from 11 January 1977 to 7 February 1977.

14. The applicant's DA Form 2-1 (Personnel Qualification Record, Part II), Item 4 (Assignment Considerations) shows the applicant was disqualified for assignment to the Nuclear Weapons Specialist duty position.

15. The ABCMR reviewed the applicant's request to upgrade his characterization of service on 19 August 1998. 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.

16. As new evidence, the applicant provides a DVD cover photo and summary of the television series "Roots." The series, which was set during and after the era of slavery in the United States, first aired on television in January 1977.

17. The Army Review Boards Agency (ARBA), Case Management Division, sent the applicant an email on 10 August 2023, requesting medical documentation in support of his contention of PTSD. To date, no additional documentation has been received.

18. 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.

19. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. 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 was experiencing mental health conditions including PTSD that mitigated his misconduct.

2. 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 served in the U.S. Air Force from 9 April 1971-16 April 1975, and he then enlisted in the Regular Army on 20 May 1975; 2) The applicant's commander initiated nonjudicial punishment (NJP) against the applicant, on 28 December 1976, for three specifications of failure to go at the time prescribed to his appointed place duty, between 7-23 December 1976. The applicant demanded a trial by court-martial in lieu of the Article 15; 3) The applicant was found to be AWOL from 11 January-8 February 1977; 4) Court-martial charges were preferred against the applicant on 9 February 1977 and 23 February 1977 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) is not available for review; 5) The applicant was discharged on 22 March 1977, Chapter 10, for the good of the service and his service was characterized as UOTHC; 6) The ABCMR reviewed and denied the applicant's request to upgrade his characterization of service on 19 August 1998.

3. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

4. The applicant noted mental health conditions including PTSD as contributing and mitigating factors in the circumstances that resulted in his separation. The applicant underwent a mental status evaluation on 14 February 1977. The examining provider noted the applicant was aggressive and confused; however, there was no impression of mental illness. The applicant was able to distinguish right from wrong and cleared to participate in board proceedings. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

5. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

6. Kurta Questions:

a. 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 including PTSD that contributed to his misconduct.

b. Did the condition exist, or experience occur during military service? Yes, the applicant reports experiencing mental health conditions including PTSD while on active service.

c. 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 including PTSD while on active service. The applicant did go AWOL and fail to report on time on more than one occasion, which can be a sequela to some mental health conditions including PTSD, 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 and low educational level that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board reviewed the applicant's request for reconsideration of his previous request for an upgrade of his under other than honorable conditions characterization of service to honorable and a personal appearance before the Board. The Board reviewed his supporting documents, his statement, the evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests.

2. After carefully considering the applicant's request and all the available evidence, argument, and references to include the various Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests, the Board determined relief was not warranted.

a. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant and his counsel 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.

b. The applicant was offered NJP for his instances of AWOL and demanded a trial by court-martial. After court-martial charges were preferred, the applicant requested voluntary discharge in lieu of a trial by court-martial. Discharges under the provisions of Army Regulation 635-200, chapter 10, are voluntary requests for discharge in lieu of trial by court-martial. The evidence shows that having been advised by legal counsel he voluntarily requested discharge for the good of the service in lieu of trial by court-martial. All requirements of law and regulation were met, and his rights were fully protected throughout the separation process.

(1) During that separation process, the applicant submitted a statement in his own behalf, wherein states, in effect, being deemed unqualified to serve as a Nuclear Weapons Specialist had a negative impact on his attitude, which ultimately led AWOL.

(2) The Board did not find the applicant's statement sufficient, as standalone evidence, to show he suffered from a mental health condition, to include PTSD, or that he suffered from an experience to excuse or mitigate the reason for nor the characterization of his discharge.

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 to amend decision of the ABCMR set forth in Docket Number AC97-09642 dated, 19 August 1998.

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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. 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides:

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

b. The ABCMR may, in its discretion, hold a hearing. 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.

3. 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.

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 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.

5. 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//