

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007760

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Statement in own behalf, dated 3 June 1971
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- Self-authored letter to the Veterans Affairs (VA), dated 25 February 2016
- Medical documents
- Spouse's certificate of death

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 his reason for going absent without leave (AWOL) was due to his sick spouse, subsequent death, and no one to care for his infant child. He was under duress due to the illness and death of his spouse; he was coerced into signing away his rights.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 11 April 1968, the applicant was inducted into the Army of the United States. Upon completion of training, he was awarded military occupational specialty 11B (Light Weapons Infantryman).
5. On 4 November 1968, the applicant was reported as AWOL and remained absent until he returned to military authorities on 22 December 1968.

6. Before a special court-martial on 7 January 1969, at Fort Dix, NJ, the applicant was found guilty of one specification of going AWOL from 4 November 1968 to 22 December 1968. The court sentenced him to forfeiture of \$46.00 per month for two months and confinement at hard labor for six months. The sentence was approved on 16 January 1969.

7. On 24 March 1969, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 26 May 1969.

8. Before a special court-martial on 12 June 1969, at Fort Dix, NJ, the applicant was found guilty of one specification of going AWOL from 24 March 1969 to 26 May 1969. The court sentenced him to confinement at hard labor for three months. The sentence was approved on 20 June 1969.

9. On 8 September 1970, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 21 March 1971.

10. On 25 March 1971, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities on 1 June 1971.

11. Court-martial charges were preferred against the applicant on 1 June 1971, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL from on or about 8 September 1970 through 21 March 1971 and from on or about 25 March 1971 to 1 June 1971.

12. The applicant consulted with legal counsel on 3 June 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 applicant 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 Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He submitted a statement in his own behalf, stating he wanted to be discharged as soon as possible. He had lost his wife due to cancer and he just wanted to be with his three kids. He felt he could not be a Soldier anymore while being a single parent.

13. On 8 June 1971, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

14. On 11 June 1971, the applicant's commander recommended approval of the applicant's request for discharge, and further recommended the issuance of an undesirable discharge.

15. By legal review on 16 June 1971, the applicant's Chapter 10 separation action was found to be legally sufficient for further processing.

16. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 18 June 1971. He further directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

17. The applicant was discharged accordingly on 30 June 1971. His DD Form 214 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 Code 4. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 1 year, 3 months, and 22 days of net active service this period with 697 days of lost time.

18. The applicant provides the following (provided in entirety for the Board):

a. Self-authored letter to the VA in support of his compensation application, detailing his medical issues and the family matters that impacted the events surrounding his discharge.

b. Medical documents from the Duke Cancer Center Genitourinary Clinic, that show he has been diagnosed and received treatment for various illnesses, including hepatitis and depression.

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

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

MEDICAL REVIEW:

1. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

2. 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 11 April 1968.
- On 4 November 1968, the applicant was reported as AWOL and remained absent until he returned to military authorities on 22 December 1968.
- Before a special court-martial on 7 January 1969, at Fort Dix, NJ, the applicant was found guilty of one specification of going AWOL from 4 November 1968 to 22 December 1968.
- On 24 March 1969, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 26 May 1969.
- Before a special court-martial on 12 June 1969, at Fort Dix, NJ, the applicant was found guilty of one specification of going AWOL from 24 March 1969 to 26 May 1969.
- On 8 September 1970, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 21 March 1971.
- On 25 March 1971, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities on 1 June 1971.
- Court-martial charges were preferred against the applicant on 1 June 1971, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL from on or about 8 September 1970 through 21 March 1971 and from on or about 25 March 1971 to 1 June 1971.
- Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service.
- He submitted a statement in his own behalf, stating he wanted to be discharged as soon as possible. He had lost his wife due to cancer and just wanted to be with his three kids. He felt he could not be a Soldier anymore while being a single parent.
- Applicant was discharged accordingly on 30 June 1971. His DD Form 214 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 Code 4. He was discharged in the lowest enlisted grade and his service characterized as UOTHC.

3. 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), self-authored statement, medical documents, spouse's certificate of death 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.

4. The applicant states his reason for going absent without leave (AWOL) was due to his sick spouse, subsequent death, and no one to care for his infant child. He was under duress due to the illness and death of his spouse; he was coerced into signing away his rights. On his DD Form 149, the applicant selected post-traumatic stress disorder (PTSD) as related to his request.

5. Due to the period of service, no active-duty electronic medical records were available for review. On 8 June 1971, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation and no psychiatric concerns were noted.

6. No VA electronic records are available for review, likely due to the characterization of his discharge. The applicant reports while in service experiencing a relapse of drug and alcohol abuse following his wife's illness, which resulted in a hepatitis diagnosis. He shares that as a part of his treatment while enlisted, he was sent to a substance abuse rehabilitative center in Lexington, KY for treatment. After his discharge from the Army, he was treated at Phoenix House, an inpatient drug and alcohol rehabilitative center for individuals struggling with addiction. He shares that due to his addiction, he was unable to care for his two stepchildren and his daughter; custody of the children was granted to their grandparents. In a self-authored letter to the VA, dated 25 February 2016, in support of his compensation application, the applicant details his medical issues and the family matters that impacted the events surrounding his discharge. Medical documents from the Duke Cancer Center Genitourinary Clinic, shows he has been diagnosed and received treatment for various illnesses, including hepatitis and a single depressive episode. Medical notes dated 2 February 2021, 6 April 2021, 7 June 2021, and 25 August 2021 screened the applicant for psychiatric symptoms and found him negative for symptoms of anxiety, depression, stress, difficulty concentrating, sleep disturbance and suicidal ideation. However, a note dated 6 April 2021 cites a history of having had a single episode of Major Depressive Disorder, mild, with his primary symptoms being feeling stressed and easy to anger. A medication expense sheet shows he was first treated for depression on 11 September 2020.

7. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had an experience during military service that resulted in a relapse of his substance abuse. However, there is insufficient evidence of a behavioral health condition during military service that would mitigate his discharge.

8. Kurta Questions:

a. 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.

b. Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing the death of his wife during military service and provides her death certificate.

c. Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's available medical record does not indicate a diagnosis of PTSD and the applicant's reported stressor event, the death of his wife, although sad is not sufficient to meet criteria for PTSD. Per the applicant's own self-report, much of his treatment history has been related to substance and alcohol abuse, including treatment at a rehabilitative center while in service and post-military service. The applicant's available record evidences a single depressive episode that was treated with medication starting on 11 September 2020, this was close to fifty years post-military service and appears to be related to psychosocial stressors, medical issues, and his extensive history of substance and alcohol abuse. Substance abuse in the absence of another behavioral health condition does not provide mitigation for misconduct. And while the applicant was later diagnosed with a single depressive episode, after decades of substance abuse, there is no nexus between his military service and depression. The record appears to indicate his mild depressive symptoms likely resulted from his extensive history of substance abuse, since it is a risk factor for mental health symptoms, along with medical issues. However, the board may consider granting him 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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. 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. Further, his discharge accurately reflects his overall record of service.
3. Nevertheless, the Board determined there was sufficient evidence of record to justify partial relief by upgrading the applicant's character of service to under honorable conditions, general due to the mitigating factors created as a result of his wife's death.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by

- voiding the applicant's DD Form 214 for the period ending 30 June 1971
- reissuing him a DD Form 214 for the period ending 30 June 1971 to show the following entries:
 - block 13a (Character of Service) - under honorable conditions (general)
 - 13b (Type of Certificate Issued) - DD Form 257A

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable character of service.

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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, 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/Navy 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//