

IN THE CASE OF: ██████████

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230007779

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he has dyslexia. He was wrongfully drafted into the Army in 1970. He was going to classes for his reading due to a diagnosis of dyslexia. Upon arrival to in-processing at Fort Hamilton, NY, he was in a room with approximately 15 to 20 other recruits. It was explained to them that they had to take a test and at that time he showed them the documentation of his dyslexia classes. Before the test, they had to take a physical and he passed this physical. Other recruits were doing all that they could to get out of going to Vietnam and he was assumed to be doing the same thing. He took the written test knowing that he failed, and the recruiter accused him of deliberately failing the test, and sent him to Fort Dix, NJ anyway. He found himself serving in the Army when he shouldn't have been. He feels his discharge should be upgraded. He is still in dyslexia classes to this day to better himself in his abilities.
3. The applicant was inducted into the Army of the United States on 12 November 1968. He completed basic combat training; however, he did not complete advanced individual training and was not awarded a military occupational specialty (MOS).
4. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 18 January 1969, for with intent to deceive, return an official Army form which was false; his punishment consisted of restriction and extra duty
- 24 January 1969, for breaking restriction on or about 23 January 1969; his punishment consisted of detention of \$25.00 of pay for one month
- 14 April 1969, for failing to go at the time prescribed to his appointed place of duty on or about 13 April 1969; his punishment was forfeiture of \$10.00 for one month, restriction and extra duty
- 3 June 1969, for without proper authority absenting himself from his unit (AWOL) on or about 29 May 1969 until on or about 3 June 1969; his punishment consisted of forfeiture of \$32.00 pay for one month

5. Before a special court martial on 30 July 1969, the applicant was found guilty of wrongfully communicating to ██████████, a threat to injure her “come on outside and I’ll kill your a___,” or words to that effect on or about 26 June 1969, and for being AWOL from his unit from 0100 to 0400 hours on or about 29 June 1969. The court sentenced him to confinement at hard labor for three months, reduction to private/E-1, and forfeiture of \$55.00 pay for three months. The sentence was approved on 5 September 1969 and would be duly executed.

6. The applicant was AWOL on 4 February 1970 and dropped from the rolls (DFR) on 5 March 1970.

7. He surrendered to military authorities on 19 June 1970. He was reported as AWOL on 12 September 1970, and DFR on 12 October 1970.

8. The applicant surrendered to military authorities and was placed in the company area effective 29 April 1971; it is believed he departed AWOL soon after.

9. On 12 February 1975, extracts from unit morning reports were requested to determine the applicant’s AWOL status.

10. A Statement for Alternate Service, dated 25 February 1975, indicates the applicant was returned to military control on 2 February 1975. He stated as the reason for his absence from military service that he was drafted into the Army. He could not read or write and had completed eight years of secondary education and was enrolled in special education classes for slow learners. Having been drafted, he had no choice but to come on active duty. He tried his best to satisfy his obligation. After basic he was sent to several schools for MOS training. He couldn’t complete the tests. The complete statement is not available for review.

11. The Elections of military Rights, dated 24 February 1975, shows the applicant, having been advised by military counsel, desired his military records be checked for any irregularities, inconsistencies, or information that may be beneficial to his case.

12. The applicant having been told by legal counsel about the President's Clemency Program opted to sign a Reaffirmation of Allegiance, a Pledge of Public Service and accept an Undesirable Discharge. He reaffirmed his allegiance and pledged to complete alternate service on 25 February 1975.

13. The applicant consulted with legal counsel on 25 February 1975 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 a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Presidential Proclamation Number 4313. He understood that his absence was characterized as a willful and persistent unauthorized absence for which he was subject to trial by court-martial for violation UCMJ and could lead to the imposition of a bad conduct or dishonorable discharge.

b. He voluntarily requested discharge for the good of the service. He further 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.

c. He understood that within 15 days of the date of receipt of the Undesirable Discharge Certificate he must report to his State Director of Selective Service to arrange for performance of alternate service. He further understood that satisfactory completion of such alternate service will be acknowledged by issuance a Clemency Discharge Certificate. He realized, however that such a certificate will not alter his ineligibility for any benefits predicated upon his military service.

14. The separation authority approval memorandum is not available for review.

15. The applicant was discharged on 25 February 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under Presidential Proclamation and Department of Defense Memorandum, for the good of the service. He was assigned Separation Program Designator code KNL with Reenlistment Code 4. His service was characterized as UOTHC. He was credited with 1 year, 6 months, and 26 days of net active service this period. His DD Form 214 shows in:

- Item 26 (Decorations, Medal, Badges, Commendations, Citations and Campaign Awarded or Authorized): National Defense Service Medal
- Item 27 (Remarks)-Time lost before normal expiration of term of service (ETS): 206 days; time lost after normal ETS 11 November 1970: 1517 days; the applicant agreed to serve 21 months alternate service pursuant to Presidential

Proclamation #4313; and separation for the good of the service by reason of willfully and persistent unauthorized absence pursuant to Presidential Proclamation #4313

16. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973.

17. National Headquarters, Selective Service System Memorandum, Washington, D.C., dated 3 September 1976, shows the Director terminated the applicant from enrollment in the Reconciliation Service Program. He did not complete his required period of alternate service. He did not cooperate on an approvable job. He refused to accept an approvable position.

18. On 20 August 1979, the Army Discharge Review board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

19. On 6 September 2023, an agency staff member, requested the applicant provide medical documents that support his issue of other mental health. As of 13 October 2023, no response was provided.

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.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge.

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:

- Applicant was inducted into the Army on 12 November 1968.
- Applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 18 January 1969, for with intent to deceive, return an official Army form which was false.
 - 24 January 1969, for breaking restriction on or about 23 January 1969.

- 14 April 1969, for failing to go at the time prescribed to his appointed place of duty on or about 13 April 1969.
- 3 June 1969, for without proper authority absenting himself from his unit (AWOL) on or about 29 May 1969 until on or about 3 June 1969.
- Before a special court martial on 30 July 1969, the applicant was found guilty of wrongfully communicating to ██████████, a threat to injure her “come on outside and I’ll kill your a___,” or words to that effect on or about 26 June 1969, and for being AWOL from his unit from 0100 to 0400 hours on or about 29 June 1969.
- Applicant was AWOL on 4 February 1970 and dropped from the rolls (DFR) on 5 March 1970.
- Applicant surrendered to military authorities on 19 June 1970. He was reported as AWOL on 12 September 1970, and DFR on 12 October 1970.
- Applicant surrendered to military authorities and was placed in the company area effective 29 April 1971; it is believed he departed AWOL soon after.
- A Statement for Alternate Service, dated 25 February 1975, indicates the applicant was returned to military control on 2 February 1975. He stated as the reason for his absence from military service that he was drafted into the Army. He could not read or write and had completed eight years of secondary education and was enrolled in special education classes for slow learners. Having been drafted, he had no choice but to come on active duty. He tried his best to satisfy his obligation. After basic he was sent to several schools for MOS training. He couldn’t complete the tests. The complete statement is not available for review.
- Applicant having been told by legal counsel about the President’s Clemency Program opted to sign a Reaffirmation of Allegiance, a Pledge of Public Service and accept an Undesirable Discharge. He reaffirmed his allegiance and pledged to complete alternate service on 25 February 1975.
- Applicant was discharged on 25 February 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under Presidential Proclamation and Department of Defense Memorandum, for the good of the service. He was assigned Separation Program Designator code KNL with Reenlistment Code 4. His service was characterized as UOTHC.
- National Headquarters, Selective Service System Memorandum, Washington, D.C., dated 3 September 1976, shows the Director terminated the applicant from enrollment in the Reconciliation Service Program. He did not complete his required period of alternate service. He did not cooperate on an approvable job. He refused to accept an approvable position.

c. Review of Available Records Including Medical:

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, ABCMR Record of Proceedings (ROP), self-authored statement, and documents from his service record and separation. 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. The applicant states he has dyslexia. He was wrongfully drafted into the Army in 1970. He was going to classes for his reading due to a diagnosis of dyslexia. Upon arrival to in-processing at Fort Hamilton, NY, he was in a room with approximately 15 to 20 other recruits. It was explained to them that they had to take a test, and at that time, he showed them the documentation of his dyslexia classes. Before the test, they had to take a physical and he passed this physical. Other recruits were doing all that they could to get out of going to Vietnam and he was assumed to be doing the same thing. He took the written test knowing that he failed, and the recruiter accused him of deliberately failing the test, and sent him to Fort Dix, NJ anyway. He found himself serving in the Army when he shouldn't have been. He feels his discharge should be upgraded. He is still in dyslexia classes to this day to better himself in his abilities.

d. Due to the period of service, no active-duty electronic medical records were available for review, however, the applicant submitted hardcopy documentation from his time in service. An induction examination dated, 12 November 1968, lists his PULHES as "1111111" and states the applicant was "found acceptable for induction into the armed forces". In addition, the documentation regarding a special court martial, on 30 July 1969, indicates the applicant was found guilty of wrongfully communicating a threat to injure, stating: "you don't say nothing or I'll kick your face in" and "I know you work nights next week and I'm going to wait for you to get your ass". In addition, he was found guilty of committing an assault by making threatening motions at the victim with a dangerous weapon, a knife.

e. No VA electronic medical records were available for review and the applicant is not service connected. On 6 September 2023, an agency staff member, requested the applicant provide medical documents that support his issue of other mental health. As of 13 October 2023, no response was provided. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of dyslexia.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. Regardless, it is unlikely any BH condition would mitigate his discharge due to assault with a dangerous weapon, a knife.

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 self-asserts a mitigating condition.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. Regardless of the lack of medical documentation, the applicant self-asserts dyslexia which is a learning disability that involves difficulty reading due to problems identifying speech sounds and learning how they relate to letters and words. Dyslexia is not due to problems with intelligence, it is as a result of individual differences in areas of the brain that process language. Dyslexia is not a behavioral health condition that would provide mitigation of assault with a dangerous weapon or of any of his other misconduct including falsifying a document and repeated AWOL's. Assault and his other misconducts are not a natural sequela of any learning disability and would not mitigate the reason for his discharge. In addition, dyslexia does not impact the ability to distinguish right from wrong and act in accordance with the right.

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 applicant's 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, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. The opine noted, it is unlikely any BH condition would mitigate his discharge due to assault with a dangerous weapon, a knife. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the pattern of misconduct and assault with a deadly weapon.

2. The Board noted, the applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh as a clemency determination. 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. Therefore, the Board denied relief.


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 for correction of the records of the individual concerned.

3/4/2024



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. Title 10, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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.

3. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel. Currently in effect:

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.

4. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973.

5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers

- may prejudice the best interests of the government if the individuals were to remain in the military service

6. 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 Service Discharge Review Boards (DRB) and Service 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. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs 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//