

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007811

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge 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)
- Character reference letters (3)
- Medical documents

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 he made his mistakes while in the Army as an immature young man. He does not wish to make excuses for his conduct that resulted in his discharge. He asks the Army to please consider his background prior to the Army. He grew up without his biological father, and resided with his mother who was married four times. Each of those men were abusive to him, so he lived with undisciplined anger in his heart during his younger years. He regrets that he was not able to allow the Army to mold him into a more disciplined person. However, he also would like the Army to know that he did grow up and mature, and has a successful life, a long marriage, and raised well-disciplined accomplished children. He ministers in his community, and he is well regarded by neighbors and friends. He respectfully requests that the Army takes into consideration that some people have unseen mental health issues, after time with counseling, they can become great contributors to society, community, country.

3. On his DD Form 149, the applicant notes other mental health issues are related to his request.

4. The applicant enlisted in the Regular Army on 9 March 1982, for 4 years. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). The highest grade he attained was E-2.
5. On 7 March 1983, the applicant was reported as absent without leave (AWOL) and remained absent in a desertion status until he was apprehended by civil authorities and returned to military control on 8 December 1984.
6. Court-martial charges were preferred against the applicant on 14 December 1984, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 7 March 1983 until on or about 8 December 1984.
7. On 14 December 1984, the applicant consulted with legal counsel 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 bad conduct 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 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 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.
 - b. His declined to submit a statement in his behalf.
8. On 20 December 1984, the applicant's commander formally recommended approval of the applicant's request for discharge for the good of the service.
9. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of court-martial on 8 January 1985, and directed his reduction to the lowest enlisted grade with the issuance of a UOTHC discharge.
10. The applicant was discharged on 4 February 1985. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was

characterized as UOTHC. He was assigned Separation Code KFS and Reentry Codes 3, 3B, and 3C. He completed 1 year, 1 month, and 19 days of net active service this period with 642 days of lost time.

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

a. Character reference letters that collectively attest to the applicant's character, the challenges throughout his life, his personal self-growth, and his resiliency.

b. Psychiatric evaluation notes from SMA Healthcare that show he has been diagnosed and received treatment for a mood disorder, and a cocaine-use disorder.

12. 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.

13. 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.

14. MEDICAL REVIEW:

a. The applicant requests an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to Other Mental Health Issues.

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 enlisted into the Regular Army on 9 March 1982; 2) Court-martial charges were preferred against the applicant on 14 December 1984, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with going AWOL from on or about 7 March 1983 until on or about 8 December 1984; 3) On 14 December 1984, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10; 4) On 20 December 1984, the applicant's commander formally recommended approval of the applicant's request for discharge for the good of the service; 5) Accordingly, the applicant was discharged on 4 February 1985.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during

the applicant's period of service. Included in the casefile were medical records from SMA Healthcare, that includes an encounter document dated 4 January 2023 that shows the applicant presented to the clinic as a walk-in with complaints of depression and anxiety. He was scheduled for a Psychiatric Evaluation that was conducted on 6 February 2023. The evaluation shows the applicant was diagnosed with Unspecified Mood Disorder, Cocaine Dependence uncomplicated, and Cocaine Use Disorder Moderate. The applicant reported onset of depressive symptoms approximately 20 years prior, characterized by not fulfilling his obligations, having crazy thoughts, sadness, depressed mood, sleep problems, and low days. He also endorsed periods of high mood characterized by increased energy and productivity, increased self-esteem, and spending large sums of money. The applicant additionally reported a history of cocaine use most of his adult life and inpatient treatment related to cocaine abuse approximately 25 years prior. The applicant was started on psychotropic medication and referred for therapy. No additional BH records were provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability.

d. The applicant is requesting an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to Other Mental Health Issues. A review of the records was void of any BH diagnosis or treatment during service. Post service records show the applicant diagnosed with Unspecified Mood Disorder, Cocaine Dependence uncomplicated, and Cocaine Use Disorder Moderate, all with onset well after separation from the military and none shown to be associated with military service. In absence of documentation supporting the applicant had a BH condition during service, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. However, the applicant contends his misconduct was related to Other Mental Health Issues, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment during service. Post service records show the applicant diagnosed with Unspecified Mood Disorder, Cocaine Dependence uncomplicated, and Cocaine Use Disorder Moderate, all with onset well

after separation from the military and none shown to be associated with military service. In absence of documentation supporting the applicant had a BH condition during service, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on medical mitigation.

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 that the applicant had an experience or condition during his time in service that would mitigate his misconduct. The opine noted the applicant's record is absent sufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues that would support an upgrade based on medical mitigation.
2. The Board based on the preponderance of evidence determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for over 642 days. The Board recognized the applicant's post service accomplishments and character letters attesting to his honorable contributions to his community. However, the Board found the applicant's extensive period of AWOL could not be mitigated. 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 honorable. Therefore, the Board denied relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

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.

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

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

4. 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.

5. 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 post-traumatic stress disorder (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.

6. 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.

7. 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//