

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007869

APPLICANT REQUESTS:

- an upgrade of his discharge under other than honorable conditions (UOTHC) to either an under honorable conditions (general) or honorable
- the narrative reason for his separation be changed to show he was separated under the Trainee Discharge Program (TDP)

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Personal statement (4 pages)
- Photographs (2)

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, in effect, he was a squad leader, and he did his job. During Basic Combat Training (BCT) at Fort Knox, KY, he injured his left heel while rappelling down a wall and had to wear a special shoe while he was on medical profile during his recovery.

a. Following an incident that resulted in him cussing at his first sergeant (1SG), he was sent to be evaluated by an Army psychiatrist who said he was not mentally ready or fit to serve in the Army at that time. The psychiatrist told him she was going to have him separated under the TDP and said he could try again when he was older. But he did not want to quit because his father, uncles, and cousins served, and he did not want to be the only one who did not.

b. Due to his medical profile, he did not graduate from BCT and ship out to Fort Benning, GA for Advanced Individual Training and Airborne School with the rest of his

unit. He was placed in a holdover status while his foot healed. During that time, he helped the drill sergeant get his new unit ready by checking to see if their bunks, boots, and lockers were properly maintained, and running errands.

c. His wife was pregnant with their first child at the time. Had he shipped out with the rest of his unit, he would have been able to go on leave to spend some time with her. He asked his 1SG if he could go on leave and the 1SG said he felt sorry for the applicant's wife and child if he did not have the balls to go. This angered him and he called a taxi and left right in front of his 1SG to go to the bus station and go home. As soon as his wife and child were stable enough for him to leave, he returned to his unit. He was not trying to leave the Army.

d. His heel was feeling better, and he thought he would be sent to Fort Benning to rejoin his unit. But when he got back he was recommended for court-martial. He thought his AWOL would be considered a minor offense and he would be fined. As the court-martial proceedings progressed he requested an under honorable conditions (general) discharge and was told if he decided to come back within 6 months, he would not have to go back through BCT again.

e. Following his discharge, his nerves started bothering him. He sought treatment at the local Department of Veterans Affairs (VA) hospital and was prescribed a generic form of Zanax. After a few months, the VA staff told him to just go have a beer so, he stopped going. A few years later, he ended up in the psychiatric ward of the hospital because he was going to kill his boss (that is what the Army taught him to do). He could not hold down a job and was worried working because he was becoming violent toward people when he did. So, he stopped working and has been on Social Security disability ever since.

f. He desires an upgrade so he can regain some honor. It would also be nice to have a veterans license plate and a flag and grave marker when he dies. This has haunted him his whole life. He is getting close to dying and has had to live with the fact that he was the only one in his family who did not get an honorable discharge or at least a general, under honorable conditions discharge.

3. On 30 January 1979, the applicant enlisted in the Regular Army for a period of 3 years in the rank/grade of private/E-1. He was assigned to a unit at Fort Knox, for completion of BCT.

4. A Standard Form 600 (Chronological Record of Medical Care) shows the applicant was evaluated at the Fort Knox Community Health Activity on 8 March 1979.

5. The applicant's unit reported his duty status as AWOL from 24 March 1979 to 20 April 1979.

6. A DD Form 458 (Charge Sheet) shows on 25 April 1979, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ):

- Article 86: one specification of on or about 24 March 1979, without authority, absenting himself from his organization and remaining so absent in desertion until on or about 21 April 1979
- Article 87, one specification of on or about 12 April 1979, through design miss the movement of his unit to Fort Benning, GA.

7. On 26 April 1979, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the 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. He elected to submit a statement in his own behalf. He stated he was requesting a discharge from the Army because he was unable to adjust to military life and could not stand being away from his family. He could make a better living for himself and his family in civilian life. He was not able to take it anymore and it was driving him crazy. He asked to be discharged as quickly as possible.

8. The applicant's immediate and intermediate commanders recommended approval of his request with a discharge UOTHC.

9. On 25 May 1979, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC.

10. Orders and the applicant's DD Form 214 (Report of Separation from Active Duty) show he was discharged on 25 May 1979, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of For the Good of the Service-In Lieu of Court-Martial with Separation Program Designator code "JFS" and Reentry Eligibility codes "3 and 3b." He was credited with completing 2 months and 29 days of net active service this period. He had lost time from 24 March 1979 to 20 April 1979. He did not complete his first full term of service.

11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. The applicant provides two photographs: one of his BCT platoon (wearing an orthopedic shoe) and one of himself.

13. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published guidance on equity, injustice, or clemency.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 25 May 1979 under other than honorable conditions discharge. He states the reasons for this correction are that he injured his foot in training, he was not mentally ready for the Army, he went absent without leave to be with his wife who was having their first child, and he was court merited upon return to his unit. He states:

And after I got out nerves were messing with me so I went to the VA ... and they were giving me medicine (Libin) [? Librium], a form of Zanax but weaker, and after 3 months they told me to just go have a beer with my father ... A few years later I ended up in the nut wart of the hospital, I was going to kill my boss. (That's what the Army taught me to do). And I have been on S.S. disability ever since."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 show he entered the regular Army on 30 February 1979 and was discharged under other than honorable conditions on 25 May 1979 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Discharge for the Good of the Service – Conduct Triable by Court Martial.

d. A charge Sheet (DD Form 458) shows the applicant was charge with a period of absence without leave from 21 March 1979 through 21 April 1979; and being absent with the design of missing movement on 12 April 1979.

e. On 26 April 1979, the applicant voluntarily requested "discharge for the good of the Service under the provisions of Chapter 10, AR 635-200." The Commanding General of the U.S. Army Armor Center and Fort Knox approved his discharge request on 25 May 1979 with the directive he "be furnished a discharge certificate Under Other Than Honorable Conditions."

f. No medical documentation was submitted with the application and his service predates AHLTA. There are no clinical encounters in JLV and no diagnoses on his medical problem list in JLV.

g. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his UCMJ violations; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

h. It is the opinion of the ARBA Medical Advisor that an upgrade of his discharge is not warranted.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Applicant claims an anxiety disorder / mental health condition.

(2) Did the condition exist or experience occur during military service? NO: Applicant claims an anxiety disorder / mental health condition occurred after he was discharged from the Army. The applicant stated a psychiatrist determined he lacked the maturity to be in the Army but that is not a mental health condition. He states his nerves were messing with him only after he was discharge and that he was placed in the nut ward a few years after he was discharged.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (AWOL and missing movement). After being charged, he consulted with counsel and requested discharge under provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or

experience that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

b. The Board noted that the applicant’s narrative reason for separation was assigned based on the fact that after he went AWOL and missed movement, he had court-martial charges preferred against him and he chose to be discharged under chapter 10 in lieu of trial by a court-martial. Absent his UCMJ violations, there was no reason to prefer court-martial charges against him. The underlying reason for his discharge was his AWOL/missed movement and subsequent voluntary request for discharge in lieu of the court-martial. The only valid narrative reason for separation permitted under chapter 10 is “In Lieu of trial by a court-martial.” The Board did not find evidence that the narrative reason for his separation is in error or unjust.

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 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 that 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. It is not an investigative body.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; 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. 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, BCM/NRs 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//