

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230008000

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 AC93-06138 on 9 August 1995.
2. The applicant states he received a good conduct medal for 3 years of honorable service from 4 January 1971 to December 1979. Before beginning his 12-month extension contract the Army gave him an unjust Article 15 while he was suffering from alcoholism and depression. Therefore, he could not complete his extension contract for the military occupational specialty (MOS) 13F (Joint Fire Support Specialist) to its fullest. On a drunken day he found himself on a bus headed to New York City and after calling into his assigned base the first sergeant, at his permanent station, told him to report to the closest base, which he did. There he requested a discharge due to the Army's breach of contract. After attempting to get treatment for alcoholism and depression while in the Army and not receiving treatment; he finally received treatment at the Veterans Administration (VA) hospital in New Jersey. He did not know he could have requested a discharge change much sooner for depression. In addition, he has been clean and sober for over 28 years. After becoming a Disabled American Veterans commander, the service officer informed him that he could request a review.
3. The applicant enlisted in the Regular Army on 4 January 1977 for three years. His primary MOS was 12B (Combat Engineer), his secondary MOS was 13B (Cannon Crewman).

4. The applicant was hospitalized on 9 June 1980. His illness was determined to be in the line of duty. He was present for duty (PDY) on 12 June 1980.
5. The applicant was absent without leave (AWOL) on 2 July 1980 and dropped from the rolls on 31 July 1980.
6. Court-martial charges were preferred against the applicant on 25 August 1980 for violations of the Uniform Code of Military Justice (UCMJ). His DA Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 2 July 1980.
7. The applicant was PDY on 10 September 1980, after he surrendered to military authorities and was returned to military control.
8. The applicant's separation packet and separation approval authority memorandum are not available for review.
9. The applicant was discharged on 12 November 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for administrative discharge conduct triable by court martial. He was assigned Separation Code JFS with Reenlistment Code 3 and 3B. His service was characterized as UOTHC. He completed 3 years, 8 months, and 1 day of net active service. He lost time from 2 July 1980 to 9 September 1980. His awards include the Army Good Conduct Medal and two Marksmanship Qualification Badges.
10. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
11. On 12 June 1991, the Army Discharge Review Board (ADRB) determined that the reason for discharge and the characterization of service were both proper and equitable and denied the applicant's request for relief. On 16 June 1991, the ADRB transferred the applicant's case to the ABCMR.
12. On 9 August 1995, the ABCMR determined the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law. The ABCMR denied the applicant's request for upgrade of his discharge.
13. On 4 August 2023, an agency staff member requested the applicant provide medical documents that support his issue of other mental health. As of 5 September 2023, no response was provided.

14. 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.

15. MEDICAL REVIEW:

a. The applicant requests reconsideration of his previous request to upgrade 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 4 January 1977; 2) Court-martial charges were preferred against the applicant on 25 August 1980 for violations of the Uniform Code of Military Justice (UCMJ). His DA Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 2 July 1980; 3) The applicant was PDY on 10 September 1980, after he surrendered to military authorities and was returned to military control; 4) The applicant's separation packet and separation approval authority memorandum are not available for review; 5) The applicant was discharged on 12 November 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10.

c. The VA electronic medical record (JLV), and ROP were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. No military BH documents were provided for review. A review of JLV shows the applicant 50 percent SC for various physical disabilities but he does not have a SC BH disability. Records show the applicant sought assistance with smoking cessation at VA BH clinic from June 2000 to January 2001 secondary to being diagnosed with bronchitis and pneumonia and urged by medical professionals to quit smoking. During sessions he also complained of chronic low back pain and increased depression and anger that he thought may be secondary to his attempts to quit smoking. He was instructed to visit the ED to get a medical referral for antidepressant medications but refused, stating a fear that he would be psychiatrically hospitalized. His diagnosis for the timeframe reflected Tobacco Use Disorder Unspecified. Records also show the applicant was diagnosed with PTSD in May 2023 secondary to witnessing a female neighbor and a police officer shot by a suspect, in April 2023, who reportedly began walking toward the applicant afterwards and took his own life. The applicant reported fear of leaving his home, persistent nightmares, intrusive thoughts, and concerns someone would come looking for him. In June 2023 the applicant's BH problem list was amended to include MDD recurrent secondary to reporting severe depression with SI without intent. He reported a history treatment for depression and alcohol use to reportedly included numerous psychiatric hospitalizations with the last incident reportedly occurring in 1995. He engaged in outpatient BH treatment for PTSD

through September 2023 with good results. No civilian BH records were provided for review.

d. The applicant requests reconsideration of his previous request to 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 history for the applicant during active service. Post-service records show the applicant diagnosed with PTSD secondary to witnessing a neighbor and police officer shot in April 2023. He was subsequently also diagnosed with MDD recurrent after reporting depressed mood and SI without intent and a reported history of depression and alcohol use disorder treatment, to include psychiatric hospitalizations, with the last reportedly occurring in 1995. The EMR was void of treatment records to support the applicant's claim of prior diagnosis of depression or psychiatric hospitalization and he provided no hardcopy civilian records as evidence. In absence of documentation supporting the applicant's claim of Other Mental Health Issues during his time in service, there is insufficient evidence to support his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to warrant an upgrade of his discharge characterization for BH 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. The applicant asserts his misconduct was related to 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 history for the applicant during active service. Post-service records show the applicant diagnosed with PTSD secondary to witnessing a neighbor and police officer shot in April 2023. He was subsequently also diagnosed with MDD recurrent after reporting depressed mood and SI without intent and a reported history of depression and alcohol use disorder treatment, to include psychiatric hospitalizations, with the last reportedly occurring in 1995. The EMR was void of treatment records to support the applicant's claim of prior diagnosis of depression or psychiatric hospitalization and he provided no hardcopy civilian records as evidence. In absence of documentation supporting the applicant's claim of Other Mental Health Issues during his time in service, there is insufficient

evidence to support his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to warrant an upgrade of his discharge characterization for BH mitigation.

BOARD DISCUSSION:

1. The Board determined 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.
2. 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. The applicant's separation packet is not available for review. However, the Board noted according to the applicant's DD Form 214, the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the 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 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 reviewer's finding insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate 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 that the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AC93-06138 on 9 August 1995.



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 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.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

3. Army Regulation (AR) 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. 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.

5. 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//