

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230008483

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his other than honorable conditions (UOTHC) discharge to honorable, and the narrative reason for separation be changed to "Secretarial Authority" with a corresponding separation code and reentry code.

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit 3-Self Authored Letter
- Attorney Brief
- Exhibits 4-6 Service Documents
- Exhibit 1-DD Form 214 (Armed Forces of the United States Report of Transfer or Separation)
- Exhibit 2-DD Form 214 (Report of Separation from Active Duty)
- Exhibit 7-Department of Veterans Administration (DVA) Statement of Charges of Medical Care
- Exhibit 8-Progress Notes
- Exhibits 9-14-Character Letters
- Exhibit 15-Acknowledgement of Request for Information

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 AC88-05957 on 24 May 1989.

2. The applicant states:

a. He had memory loss of a situation that happened while stationed in California and Germany. His memory came back during a post-traumatic stress disorder (PTSD) screening. He was traumatized while in the military by being hit in the chin with a bunk adapter, by another Soldier for no reason and he didn't deserve to be punished with the offense. The Military Police came, and he was taken to the hospital, he was afraid for his life, dazed and confused. He was asked if he wanted to press charges on the

Solider. He didn't know what to do. Mentally and physically, he had a few bumps along the way during his training. He reenlisted without discussing it with his pregnant wife. He received orders to Germany. He and his wife were fighting about his decision. There should have been some support for families having problems, and he did ask his company commander for some guidance on the matter, and he jokingly said, if the military wanted you to have a wife, they would have issued you a wife.

b. He and his wife were arguing, his wife was on Valium from the doctor, and he had been drinking, he was speeding, and she reached over and grabbed the steering wheel forcibly and he lost control and hit a tree with the children in the back seat. His wife was badly injured. When he returned to his unit, he felt humiliated and a disgrace with no one to talk to. He wasn't asked how things were going. He was removed from his transportation unit as a truck driver, where he drove officers and sent back to his military occupational specialty (MOS) 11H (Indirect Fire Crewman). He asked if his orders could be changed due to his hardship and was turned down. He was given leave and he and his wife got sick after eating at a restaurant. He did not want to be absent without leave (AWOL) and didn't know how to manage the situation, now leaving his family behind, as ordered.

c. Arriving in Germany he felt depressed and lost. He walked around incoherent and tried to make the best of things and doing his job. He didn't know how he was going to be an acting sergeant, with an 8th grade education and no training. He details an incident when he was hit by another Soldier and knocked out of his chair. The Soldier that hit him had a size 16 EEE shoe, weighted 260lbs and was 6'5". He was not asked how he was doing. He felt defeated. He was AWOL and his friend broke the window at a store, and he confessed the car was his that drove them to the store. He was charged with complicity to breaking and entering. Post service he worked in a furniture store and he and his wife divorced. He took enough pills to take his life and was in a coma. He was on probation. He was experiencing PTSD he wasn't aware of in his mind at that time. He has medical issues. He has been through seven marriages, and he volunteers. (His full statement is available for review).

3. Counsel states the applicant had a first term of service as honorable and he reenlisted. The Veterans Administration (VA) diagnosed the applicant with depression in 1983. The applicant was positive for PTSD. The applicant's misconduct should be mitigated by his service-connected PTSD and his PTSD occurred as a direct result of his service and therefore excuses and outweighs his misconduct.

4. The applicant enlisted in the Regular Army on 2 August 1971 for two years. His MOS was 11H. His DD Form 214 shows he was honorably discharged on 29 July 1973, for immediate reenlistment. He completed 1 year, 11 months, and 28 days net active service this period. He was awarded the National Defense Service Medal.

5. The applicant reenlisted on 30 July 1973.
6. He served in Germany from 28 November 1973 through 25 May 1974.
7. The applicant was AWOL on 25 May 1974 and dropped from the rolls on 23 June 1974. He was arrested by civilian authorities on 8 August 1974 for resisting arrest and complicity.
8. The applicant's duty status was changed from confined by civil authorities to present for duty on 23 October 1974. He appeared in Common Pleas Court, ■■■, on 23 October 1974 and was placed on two years' probation for charges of complicity and resisting arrest. He was returned to military control on the same date.
9. Court-martial charges were preferred against the applicant on 6 November 1974 for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 25 May 1974 until 29 October 1974.
10. 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 UOTHC discharge; and the procedures and rights that were available to him.
 - a. After consulting with legal counsel, he voluntarily requested discharge under the provision 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 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 and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.
 - b. He elected to submit a statement in his own behalf. He stated he wasn't drafted but he was going to be drafted so he enlisted. He went AWOL because of a number of problems. He went on leave and his wife had to have an operation on her hip and foot and would be in a cast for six months, so he put in for a compassionate reassignment and it was turned down and he became very emotional and upset. They had been in a car accident, and he had been driving and lost control and hit a tree. His children were also hurt. He did not feel a part of the Army. The Army just is not in him. If his discharge is disapproved, he will feel badly hurt and go AWOL again and his life will be one mess. He is on probation for two years. He is trying to find himself and what he really wants to do, the Army just isn't it.

11. The applicant's commander recommended approval of his request for discharge for the good of the service, in lieu of trial by court-martial on 14 November 1974. He further recommended the issuance of an Undesirable Discharge Certificate. His chain of command recommended approval.

12. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 19 November 1974. He directed the applicant's reduction to the lowest enlisted grade with the issuance of a DD Form 258A (Undesirable Discharge Certificate).

13. The Medical Option Statement, dated 3 December 1974 shows the applicant acknowledged there had been no change in his medical condition since his last separation examination.

14. The applicant was discharged on 3 December 1974. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service, in lieu of trial by court-martial. His service was characterized as UOTHC. He completed 11 months and 6 days of net active service this period. He had 151 days of lost time. His awards include the Army Good Conduct Medal.

15. 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.

16. The applicant provides:

a. Exhibits 4-6 Service Documents as discussed above and Exhibits 1, and 2-copies of his DD Forms 214 discussed above.

b. Exhibit 7-DVA Statement of Charges of Medical Care, date of illness or injury 22 May 1983 shows a diagnosis of depression.

c. Exhibit 8-Progress Notes, dated 18 October 2018 shows a diagnosis of PTSD.

d. Exhibits 9-14-Character letters that attest to the applicant's having a huge "servant's heart", volunteerism, being unsurpassed in accomplishing the requirements needed for important veteran centric ministries, being a "class act", excellent friend who is generous and has a kind character. His service to our country and his commitment to help others. He is humble, spiritual, and continually teaches love to humankind and leads by example. He is a hero for all that he was able to get through while viewing everything as a life lesson and remaining positive. He refuses to succumb to health issues. He is a family man and is always there for anyone when called upon.

e. Exhibit 15-Acknowledgement of Request for Information-Rollman Psychiatric Institute, dated 18 June 1987, shows admitted on 10 November 1975-discharged on 21 November 1975. Condition improved at time of discharge. Diagnosis: Immature personally and alcohol addiction. Previous admission 23 September 1975.

17. On 18 March 1980, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

18. On 24 May 1989, 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.

19. On 22 April 1998, the ABCMR denied the applicant's request for upgrade. It was determined the applicant had not filed within the time prescribed by law.

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

21. 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/or 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 3 December 1974 discharge characterized as under other than honorable conditions. He states that PTSD and other mental health issues were the reason for his misconduct and resulting absence without leave.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the regular Army on 30 July 1973 and was discharged on 3 December 1974 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (6 August 1974): Discharge for the Good of the

Service. The DD 214 states the applicant had 151 days lost under Title 10 United States Code § 972.

d. A Charge Sheet (DA Form 458) shows he was charged with absence without leave (AWOL) from 25 May 1974 thru 29 October 1974.

e. Counsel states the applicant was AWOL because he had been incarcerated in a civilian facility for breaking and entering:

“On his birthday, which fell during the Applicant’s leave, the Applicant met up with his brother-in-law’s cousin. The cousin suggested they should get beer to celebrate the Applicant’s birthday, but the Applicant did not have any money. The cousin stated that they could get fifty (50) dollars from his uncle’s gas station, where the cousin worked. The men then went to the gas station. The cousin unlocked the door with his key, took money from the drawer, and locked the station back up. The cousin then picked up a rock and threw it through a window to mimic a break-in.

Someone witnessed this and called the police. Thereafter, the Applicant was arrested for breaking and entering. Because of the civilian charge, the Applicant was imprisoned and was absent without leave. The Applicant was charged with a violation of the Uniform Code of Military (UCMJ) Article 86 for being absent without leave (AWOL) from the Army. The Applicant was charged with being absent from on or about 25 May 1974 until on or about October 1974. The Applicant requested a Discharge for the Good of the Service in November 1974, which was approved the same month.”

f. On 13 November 1974, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200.

g. His discharge request was approved by the acting commander of the US Army Armor Center and Fort Know on 19 November 1974 with the directives he be reduced to the grade of Private (E01) and “furnished with an Undesirable Discharge Certificate.”

h. Civilian medical documentation shows the applicant has been diagnosed with PTSD and JLV shows he has been diagnosed with depression and generalized anxiety disorder. Because of the characterization of his discharge, he is not eligible for disability benefits and thus it is not known if these conditions were incurred while he was in service, i.e., service-connected, or developed after his discharge from the Army.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD and Depression

(2) Did the condition exist or experience occur during military service? Applicant claims PTSD incurred while on Active duty in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No: While these conditions are associated with avoidant behavior, avoidant behavior was not the cause of his AWOL. Rather, he had been incarcerated in a civilian facility during this time for breaking and entering and likely also theft. As these conditions do not interfere with or affect one's ability to differentiate right from wrong and adhere to the right, they cannot mitigate the crimes which led to his AWOL and subsequent voluntary request for discharge.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Medical Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation and the reason for his separation were not 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AC88-05957 on 24 May 1989.

7/24/2024

X

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, 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 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.

3. AR 635-5, states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Item 9c (Authority and Reason) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

b. Item 9e (Character of Service) characterization or description of service is determined by directives authorizing separation.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court martial.

5. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

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 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 (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//