

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230008502

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- Various Department of Veterans Affairs (VA) forms, dated 12 May 2023
- Post-service medical documents

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 was subjected to cruel treatment while he was in the military. He became depressed, and he got home sick. He went home at that particular time because he was very confused, and the Army caused that. He returned back to the Army, and his treatment was worse. He did not understand what was going on. He did not ask to be court-martialed, nor did he ask to get out of the military. As a result of this, he has suffered for the last few decades. He has tried to have the Army work with him. He can't hold a job as a result of this matter.
3. The applicant enlisted in the Regular Army on 4 August 1977 for 3 years. Upon completion of training, he was awarded military occupational specialty 36K (Tactical Wire Operations Specialist).
4. On 19 September 1977, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for disobeying a lawful order from his superior noncommissioned officer, on or about 15 September 1977. His punishment included forfeiture of \$37.00 and seven days restriction and extra duty.

5. A clinical record, containing physician's progress notes, shows the applicant was hospitalized from 22 May 1979 to 24 May 1979. The attending physician diagnosed him with a character disorder, hysterical gestures.
6. On 4 June 1979, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 20 June 1979.
7. On 21 June 1979, the applicant was reported as AWOL a second time, and remained absent until he surrendered to military authorities on 31 July 1979.
8. On 25 September 1979, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL on two separate occasions. His punishment included reduction in grade to E-3, forfeiture of \$250.00 per month for two months, and 30 days restriction and extra duty.
9. On 3 October 1979, the applicant was reported as AWOL a third time. He was subsequently dropped from the rolls on 2 November 1979. He surrendered to military authorities on 17 April 1980.
10. Court-martial charges were preferred against the applicant on 18 April 1980, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 3 October 1979 until on or about 17 April 1980.
11. On 21 April 1980, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
12. On that same date, 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 lieu of trial by court-martial. 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. He declined to submit a statement in his own behalf.

13. On 29 April 1980, the applicant's commander recommended approval of the applicant's request for discharge. The commander noted the applicant was counseled regarding possible application for hardship discharge or compassionate reassignment, but he did not desire to submit an application at that time. The intermediate commander concurred with the recommendation.

14. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 2 May 1980, and directed the issuance of an UOTHC discharge certificate.

15. The applicant was discharged on 27 May 1980. 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 administrative discharge conduct triable by a court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3, and 3B. He was credited with 2 years, 1 month, and 14 days of net active service this period with 253 days of lost time.

16. The applicant petitioned the Army Discharge Review Board, requesting upgrade of his UOTHC discharge. On 31 March 1983, the Board voted to deny relief and determined the applicant's discharge was both proper and equitable.

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

a. VA forms in support of his VA disability and compensation benefits claim.

b. Medical progress notes detailing his treatment for various injuries and illnesses to include depression and alcohol/substance abuse.

18. 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.

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

20. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable condition (UOTHC) characterization of service.

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 enlisted in the RA on 4 August 1977.
- On 19 September 1977, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for disobeying a lawful order from his superior noncommissioned officer, on or about 15 September 1977.
- On 4 June 1979, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 20 June 1979.
- On 21 June 1979, the applicant was reported as AWOL a second time, and remained absent until he surrendered to military authorities on 31 July 1979.
- On 25 September 1979, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL on two separate occasions.
- On 3 October 1979, the applicant was reported as AWOL a third time. He was subsequently dropped from the rolls on 2 November 1979. He surrendered to military authorities on 17 April 1980.
- Court-martial charges were preferred against the applicant on 18 April 1980, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 3 October 1979 until on or about 17 April 1980.
- Applicant was discharged on 27 May 1980. 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 administrative discharge conduct triable by a court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Codes 3, and 3B.

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 293, DD Form 214, self-authored statement, medical documentation, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he was subjected to cruel treatment while he was in the military. He became depressed, and he got homesick. He went home at that particular time because he was very confused, and the Army caused that. He returned back to the Army, and his treatment was worse. He did not understand what was going on. He did not ask to be court-martialed, nor did he ask to get out of the military. As a result of this, he has suffered for the last few decades. He has tried to have the Army work with him. He can't hold a job as a result of this matter.

e. 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. A physician's progress note, indicates the applicant was hospitalized from 22 May 1979 to 24 May 1979. The attending physician diagnosed him with a character disorder (which would now be labeled a personality disorder) and noted hysterical gestures. On 21 April 1980, the applicant underwent a mental status evaluation. He evidenced no significant mental illness and was not given a diagnosis. He was found to be mentally responsible, met medical retention standards, and was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. A Request for Discharge for the Good of the Service dated 29 April 1980, indicates the applicant reported going AWOL due to familial reasons and desired a discharge because he could not do what he wanted in the service. He stated that if returned to duty he would again go AWOL. The letter indicates the applicant was counseled regarding possible application for a hardship discharge or compassionate reassignment, but he refused.

f. The VA electronic medical records available for review indicates the applicant is not service connected. The record indicates he has sought VA support primarily related to issues of housing instability and homelessness. His most recent encounter on 12 January 2024, indicates he "has utilized homeless services at several different VA's. He states that he is addicted to marijuana and that has impeded his ability to work as a chef. He is not seeking treatment, however." The applicant has been diagnosed with Adjustment Disorder with depressed mood, usually related to current psychosocial stressors.

g. 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 or diagnosis that mitigates his misconduct.

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 a mitigating condition on his application.

(2) Did the condition exist or experience occur during military service? Yes. The applicant reports feeling depressed during his time in service due to being homesick.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserts depression, the available medical documentation evidences his depressed mood due to is current psychosocial stressors not his time in service.

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 mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. 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 a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

5. 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.

6. 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//