

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008507

APPLICANT REQUESTS: his uncharacterized service be upgraded to an honorable discharge and an appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Behavioral Health Treatment record extract

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 told that if he signed the paperwork, he would be punished and reinstated. However, he was put on a Greyhound bus and kicked out of the Army. He was told he could not get legal counsel and to just sign the paperwork. He trusted the officer and did not really understand what was going on because it all happened so fast. He could not obtain some evidence, such as his prison record and rehabilitation time due to his depression. The applicant indicates on his DD Form 149 that post-traumatic stress disorder (PTSD) and other mental health conditions are related to his request.

3. On 26 July 1984, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of initial entry training, he was assigned to a unit at Fort Lewis, WA.

4. The applicant's unit changed his duty status from:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 10 January 1985
- AWOL to Dropped from Rolls (DFR) on 9 February 1985
- DFR to PDY on 20 March 1985 when he surrendered to military authorities at Fort Ord, CA

5. The applicant underwent a separation medical examination on 22 March 1985 and was determined to be qualified for continued service and/or administrative separation.
6. The applicant underwent a mental status evaluation on 22 March 1985, and it was determined he was mentally responsible, had the mental capacity to understand and participate in the proceedings, and met regulatory retention requirements.
7. A DD Form 458 (Charge Sheet) shows on 25 March 1985, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by on or about 10 January 1985, for absenting himself from his organization and remaining so absent until on or about 20 March 1985.
8. On 20 March 1985, 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. 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 under other than honorable conditions (UOTHC) discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf.
9. The applicant's chain of command recommended approval of his request with an uncharacterized entry level separation due to his lack of time in the military.
10. On 24 May 1985, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with an uncharacterized entry level separation.
11. Orders and the applicant's DD Form 214 show he was discharged on 13 June 1985, in the rank/grade of PV1/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." His service was characterized as Entry Level Status (uncharacterized). He was credited with completing 8 months and 9 days of net active service this period. He had lost time from 10 January 1985 to 19 March 1985. He did not complete his first full term of service.
12. 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. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.
13. The applicant provides five nonsequential pages extracted from his 1028-page behavioral health treatment record. They show, in part, he had a diagnosis of PTSD and participated in counseling sessions with a substance use recovery group.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

15. MEDICAL REVIEW:

a. The applicant requests that his service characterization be changed from Uncharacterized to Honorable. He contends his misconduct was related to PTSD and 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 26 July 1984; 2) The applicant was marked AWOL on 10 January 1985 and Dropped from Rolls on 9 February 1985; 3) on 25 March 1985, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) by on or about 10 January 1985, for absencing himself from his organization and remaining so absent until on or about 20 March 1985; 4) On 20 March 1985, 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; 5) On 24 May 1985, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with an uncharacterized entry level separation and the applicant was discharged on 13 June 1985, accordingly.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not use during the applicant's time in service. Included in the applicant's casefile was a Report of Mental Status Evaluation dated 22 March 1985, that shows the applicant was deemed mentally responsible, had the mental capacity to understand and participate in the proceedings, and met regulatory retention requirements. Also included was a Report of Medical Examination dated 22 March 1985 that shows the applicant was medically cleared for administrative separation. No other military BH-related records were provided for review.

d. A review of JLV shows the applicant does not have a SC disability but does have a history of BH treatment involvement. Records show the applicant engaged the VA in June 2018 seeking HCHV services. The applicant reported he served in the military from 1984-85 and was honorably discharged for medical reason after suffering an accidental explosion to his face. He noted currently being housed but expected eviction within the next 3-days due to non-payment of rent. He was provided information on local shelter, process for filing a VA claim, and recommended to follow-up with VRC and VSO as needed. Records show he was enrolled in the HCHV program, on and off, from August 2018 through September 2021.

e. Records show the applicant was diagnosed with PTSD on 30 March 2021, after presenting to a new provider and endorsing a history of PTSD and Insomnia with onset 10-years prior. The applicant also reported daytime anxiety, low-mood, isolation, and anhedonia. He reported traumatic exposure during military service, although the encounter was void on specific details. The provider also noted the applicant had six toes amputated in February 2021, contributing to depressed mood. The applicant's diagnosis reflected PTSD and MDD, he was started on psychotropic medication, and referred for outpatient treatment. Records show the applicant engaged in one outpatient session in June 2021 and records are void of any further treatment until 2022.

f. On 30 September 2022 the applicant underwent a diagnostic clarification evaluation. He reported a history of trauma that included being in the home when his brother was shot and killed in 2005, witnessing a Soldier's head get blown off by a grenade during military service, and traumatic falls during drill. He also reports that he heard two friends and a neighbor fall and die while they were intoxicated. He endorsed the loss of his brother as being the most difficult. In addition to trauma exposure, the applicant reported a history of 7 concussions and multiple TBIs as a result of playing football in high school, the military, and college. It should be noted that records were void of any medical documentation supporting findings related to concussion, TBI, or TBD. The applicant was diagnosed with PTSD and MDD and referred for outpatient trauma-focused treatment, which the applicant attended routinely through June 2023.

g. Records show the applicant submitted a claim for benefits on 5 May 2023; the associated Initial PTSD DBQ was not available for review. However, a VA Decision Letter Dated 14 June 2023 shows the applicant's claim for SC PTSD/MD was denied due to him not providing credible evidence to support his in-service claimed stressor actually occurred. It was further noted that his service record did not show complaint, treatment, or diagnosis of the condition, and no evidence that would lead to a reasonable conclusion to support his claim of PTSD/MDD. The applicant provided civilian medical documentation from April 2023 that showed diagnoses of Substance Use Disorder and PTSD. The records were void of specific session details and in no way related the diagnoses to military service.

h. The applicant requests that his service characterization be changed from Uncharacterized to Honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues. A review of the records shows the applicant diagnosed with PTSD and MDD, however, the diagnosis appears related to traumatic experiences and other psychosocial stressors that occurred post service (e.g., murder of brother in 2005, toes amputated in 2021, death of friends in 2022). VA Rating Decision Letter dated 14 June 2023 shows denial of the applicant's service connection claim due to lack of evidence to support his claimed in-service stressor actually occurred. In absence of evidence supporting PTSD/MDD during service, there is insufficient evidence to establish the applicant's misconduct was related to PTSD or Other Mental Health Issues and insufficient evidence to support a change in his Characterization of Service, based on medical mitigation.

i. Based on the available information it is the opinion of the ARBA medical advisor that there is insufficient evidence to support the applicant had a condition or experiences that mitigated his misconduct. However, he contends his misconduct was related to PTSD and Other Mental Health Issue, 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 contends his misconduct was related to PTSD and 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 shows the applicant diagnosed with PTSD and MDD, however, the diagnosis appears related to traumatic experiences and other psychosocial stressors that occurred post service (e.g., murder of brother in 2005, toes amputated in 2021, death of friends in 2022). VA Rating Decision Letter dated 14 June 2023 shows denial of the applicant's service connection claim due to lack of evidence to support his claimed in-service stressor actually occurred. In absence of evidence supporting PTSD/MDD during service, there is insufficient evidence to establish the applicant's misconduct was related to PTSD or Other Mental Health Issues and insufficient evidence to support a change in his Characterization of Service, based on medical mitigation.

**BOARD DISCUSSION:**

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 Medical 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 applicant's uncharacterized service is 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 for correction of the records of the individual concerned.

6/25/2024

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 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. The ABCMR may, in its discretion, hold a hearing. 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, 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.

e. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or

failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

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//