

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008563

APPLICANT REQUESTS: Reconsideration of his previous request for 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)

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 AR20140006661 on 25 November 2014.
2. The applicant states he was only 18 years old with no education and a drug problem. He had no insight as to what was in his best interest. Now he no longer uses drugs. He is 67 years old and thinks that is long enough to penalize him. He was diagnosed with mental illness.
3. The applicant enlisted in the Regular Army on 4 June 1974 for two years. His military occupational specialty was 12B (Combat Engineer).
4. On 28 August 1975, the applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for violating a lawful general regulation by having in his possession an altered ration card that had been issued to RLD__ on or about 22 August 1975. His punishment consisted of \$50.00 for one month and extra duty.
5. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
6. The applicant was discharged on 15 October 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged 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 was assigned Separation

Program Designator KFS with Reenlistment Code 3. His service was characterized as UOTHC. He completed 1 year, 4 months, and 12 days of net active service. He had 11 months and 18 days of foreign service. His awards include the National Defense Service Medal.

7. 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. An UOTHC characterization of service is normally considered appropriate.

8. On 16 August 1976 and 15 November 1977, the Army Discharge Review Board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

9. On 25 November 2014, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the records and denied his request.

10. 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.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous requests for upgrade of his under other than honorable conditions (UOTHC) discharge.

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 June 1974.
- On 28 August 1975, the applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for violating a lawful general regulation by having in his possession an altered ration card that had been issued to RLD__ on or about 22 August 1975.
- The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
- Applicant was discharged on 15 October 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged 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. His

service was characterized as UOTHC and he was assigned Separation Program Designator KFS with Reenlistment Code 3.

- On 16 August 1976 and 15 November 1977, the Army Discharge Review Board determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.
- On 25 November 2014, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records and denied his request. The ABCMR Record of Proceedings notes the evidence reviewed during his ADRB proceedings, indicated the applicant was pending court-martial for selling illegal drugs and opted for a Chapter 10 discharge.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he was only 18 years old with no education and a drug problem. He had no insight as to what was in his best interest. Now he no longer uses drugs. He is 67 years old and thinks that is long enough to penalize him. He was diagnosed with mental illness.

e. Due to the period of service, no active-duty electronic medical records were available for review. ADRB Case Number AD7708693, hearing date 24 September 1977, shows the applicant was charged with wrongful possession of heroin, sale of heroin, hashish, and marijuana. No VA electronic medical records were available for review and the applicant is not service connected for any BH condition. The applicant has not provided any medical documentation indicating he engaged in any behavioral health care services or has been diagnosed with a BH condition.

f. 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/diagnosis. However, regardless of diagnosis, the applicant's misconduct is unlikely to be mitigated by a BH condition.

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.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserts OMH.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the record does not evidence a BH condition, and the applicant did not provide any medical documentation, even post military service, to substantiate his assertion of a BH condition. However, regardless of diagnosis, the record indicates the applicant was potentially discharged for altering an official document with intent to deceive and sale of drugs, this misconduct is unlikely to be mitigated by a BH condition.

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. The applicant's separation packet is not available for review. The available evidence shows the applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. 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 found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer'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 that 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 to amend the decision of the ABCMR set forth in Docket Number AR20140006661 on 25 November 2014.



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. 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.

4. 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//