

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230008583

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Character Letters (nine)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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:

a. He was a good Soldier. He never got into trouble, and he was told he was in a state of depression after he came back and found his wife had taken the kids, cleaned out the bank accounts and left.

b. He deployed to the desert and was the noncommissioned officer in charge of the communication section of the unit. As the only person in this section during deployment, there were 21 vehicles with communication. During the tour, none of the vehicles in the unit went down or had any problems during deployment. Upon return, his wife at the time had burned all his clothes, cleaned out the bank account, and left with his children. He did not know the whereabouts of his children.

c. Another Soldier was positive on a urinalysis test and gave the applicant's name to the Criminal Investigation Division (CID) during the investigation. The applicant's commander was told by CID to give the applicant a urinalysis test and he came up positive. He was reduced to private/E-1 and given an UOTHC discharge. During his

13 years in the military, he was a good Soldier. On his DD Form 149, the applicant indicates mental health is related to his request.

3. The applicant's complete military records are not available for review; therefore, this case is being considered based the provided DD Form 214.

4. The applicant enlisted in the Regular Army on 1 August 1978.

5. He reenlisted on 12 August 1981 and again on 27 March 1991.

6. He served in Southwest Asia from 28 September 1990 to 14 April 1991.

7. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.

8. The applicant was discharged on 20 February 1992. His DD Form 214 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. He completed 13 years, 6 months, and 9 days of net active service. He lost time from 14 April 1979 to 24 April 1979. His awards include the:

- Army Commendation Medal
- Army Achievement Medal
- Army Good Conduct Medal (4th award)
- National Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon numeral 3
- Southwest Asia Service Medal with two bronze service stars
- Kuwait Liberation Medal

9. The applicant was charged due to the commission of an offense punishable under the Uniform Code of Military Justice with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

10. The applicant provides:

- a. A copy of his DD Form 214 discussed above.
- b. Character letters that attest to the applicant being friendly, dependable, cooperative, works well with fellow co-workers, and performs his duties exceptionally. He is very professional, honest, trustworthy, hardworking, industrious with superior

integrity and efficiency. He is punctual and has pride in all he does. He is a man of good character and deserving of any and all positive consideration that can be given to him. He is conscientious and courteous, observant, and responsive. He is well known and highly respected.

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

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced mental health conditions, which mitigates his discharge.

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's complete military records, including the separation packet, are not available for review. Therefore, this case is being considered based the provided DD Form 214; 2) The applicant enlisted in the Regular Army on 1 August 1978; 3) He was deployed to Southwest Asia from 28 September 1990 to 14 April 1991; 4) The applicant was discharged on 20 February 1992. His DD Form 214 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 Code KFS with Reentry Code 3. His service was characterized as UOTHC.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided by the applicant.

d. On his application, the applicant noted other mental health conditions were related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. There was insufficient evidence the applicant was diagnosed with a mental health condition while on active service. A review of JLV was void of behavioral health documentation, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience. In addition, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. There is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. Also, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. However, the applicant contends he experienced a mental health condition or experience while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

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 to include deployment, 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 Board concurred with the conclusion of the medical advising official that there are insufficient service records describing the misconduct that led to his discharge to determine if the misconduct was 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. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

7/15/2024

CHAIRPERSON
[REDACTED]

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 20 February 1992, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 780801 UNTIL 910326

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. 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. 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 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

5. 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//