

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008659

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Character reference letters (six)
- Certificate of Ordination

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 AR20190014433 on 22 September 2020.

2. In a new argument, the applicant states:

a. During his time of enlistment in the 1980's, like many young male soldiers, he wanted to be accepted in an unfamiliar world. He tried hard to fit in, he gave in to peer pressure and tried an illegal substance. He fell in love with a beautiful girl, and he wanted to live happily ever after on top of the world. Unfortunately, he didn't know the magnitude of his actions and he went on an unauthorized leave. He was unaware and out of touch, being a young naive Soldier. He quickly learned the hard way that he knew nothing about life, or the structural process and procedures of the military. He is very embarrassed, and is truly devastated by his lack of judgment and level of immaturity back then. He acknowledges that he put himself, his fellow Soldiers, and his country in a compromising position. And for those reasons, he takes full responsibility for his actions and respectfully asks for forgiveness.

b. Realizing the error of his ways, and having a second chance at life, he is happy to say that he had amazing opportunities to change. He changed his focus, and worked hard to become the best version of himself. He is proud to say that through it all, he found salvation in God. Today, he is a man of integrity and is proud to be an ordained

minister. He is the Pastor of his church, a devoted husband whose wife is in the ministry as well, and they have an amazingly loving church with open doors and open hearts. Every day, he strives to make a difference in the lives of others.

3. On his DD Form 149, the applicant notes other mental health issues are related to his request.

4. The applicant enlisted in the Regular Army on 8 June 1982, for 4 years. Upon completion of training, he was awarded military occupational specialty 36C (Wire systems Installer/operator).

5. On 19 July 1983, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for using marijuana between 8 May 1983 and 6 June 1983. His punishment included reduction in grade to E-2.

6. A medical record consultation sheet, dated 26 July 1984, shows the applicant was diagnosed and received treatment for tension headaches, nervous stress.

7. A Criminal Investigation Division Report of Investigation, dated 27 July 1984, noted the applicant admitted to buying and selling illegal drugs for another Soldier.

8. Standard Form 558 (Emergency Care and Treatment) shows the applicant sought treatment for migraine headaches, on 30 July 1984. The attending physician noted the applicant was upset, depressed, and irritated.

9. Court-martial charges were preferred against the applicant on 29 August 1984 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of violating a lawful general regulation by wrongfully possessing a prohibited smoking device, to wit: a pipe containing marijuana residue; and one specification of wrongfully possessing, with the intent to distribute varying amounts of controlled substances, to wit: between 30 and 35 grams of marijuana in the hashish form between 10 and 25 user units of lysergic acid diethylamide; and between 1 and 3 grams of cocaine, all being Schedule I controlled substances.

10. On 3 October 1984, 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.

11. On 10 October 1984, the applicant's commander recommended approval of the applicant's request for discharge.

12. 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 18 October 1984, and directed the issuance of a DD Form 794A (UOTHC Discharge Certificate).

13. On 5 November 1984, the applicant voluntarily declined a separation medical examination.

14. The applicant was discharged on 8 November 1984. 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 the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Codes 3, and 3C. He completed 2 years, 5 months, and 1 day of net active service this period.

15. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 22 September 2020, the Board voted to deny relief and determined that the overall merits of this case were insufficient as a basis for correction of the records.

16. The applicant provides six-character reference letters that collectively attest to the applicant's faith, loyalty, professionalism, integrity, reliability, trustworthiness, and moral character. Several letters speak to the dedicated service he provides to members of his church. These letters are provided in their entirety for the Board's review within the supporting documents.

17. 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.

18. 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.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced mental health conditions that mitigates his misconduct.

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 8 June 1982; 2) On 19 July 1983, the applicant accepted non-judicial punishment for using marijuana; 3) A Criminal Investigation Division Report of Investigation, dated 27 July 1984, noted the applicant admitted to buying and selling illegal drugs for another Soldier; 4) Court-martial charges were preferred against the applicant on 29 August 1984 for possessing a prohibited smoking device and wrongfully possessing with the intent to distribute varying amounts of controlled substances; 5) On 8 November 1984, the applicant was discharged, Chapter 10, for the good of the service – in lieu of court-martial. His service was characterized as UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant asserts he was experiencing mental health conditions, which mitigates his misconduct. There is evidence the applicant reported on 26 July 1984 that he was diagnosed and received treatment for nervous stress, and he was reported to be upset, depressed, and irritated on 30 July 1984. A review of JLV provided insufficient evidence the applicant has been diagnosed with and or treated for any service-connected mental health condition by the VA. He also does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced a mental health condition that mitigates his misconduct. Around the time the applicant was being investigated for his misconduct, he reported nervous stress and depression.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a mental health condition while on active service that mitigates his misconduct. Around the time the applicant was being investigated for his misconduct, he reported nervous stress and depression.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition prior to being investigated for his misconduct. Also, there is no nexus between his reported mental health conditions and possession with the intent to sell controlled substances: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions; 2) the applicant's mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had condition or experience that mitigates his misconduct. The applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers.

2. The Board noted, from the opine, there is no nexus between his reported mental health conditions and possession with the intent to sell controlled substances. There is no evidence to show the applicant could not distinguish right from wrong. The Board found the applicant's post service achievements and his six-character letters of support attesting to his integrity, trustworthiness and community outreach as a ordained minister. However, under liberal consideration, the Board determined based on the preponderance of evidence, there is insufficient evidence of in-service mitigating factors to overcome the misconduct of selling illegal drugs. Furthermore, the Board found reversal of the previous Board determination is without merit and denied relief.

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 Board found 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 AR20190014433 on 22 September 2020.



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

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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/Navy 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//