

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008661

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), 15 March 1977
- letter from Ms. [REDACTED] 16 December 2019
- letter from Army Board for Correction of Military Records (ABCMR), 19 October 2020
- patient care summary from Community Health Centers [REDACTED] 13 October 2022
- self-authored statement, 28 March 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the 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. His first duty station was Schofield Barracks, Oahu, Hawaii, where he was stationed with his friend, whom he joined the military with under the buddy system. When his friend's mother died, he did not know anyone else on the island, so when he went home for Christmas, he went absent without leave (AWOL) and turned himself in to the military police after 31 days to get transferred to Fort Ord, California, as a permanent duty station, because it was closer to his family than Hawaii.

b. While serving at Fort Ord, a guy in his platoon asked to borrow his car for one hour, but the man kept his car for two days. The applicant called the military police, and the man was apprehended in front of the barracks when he returned after four days. He asked to borrow the applicant's car again, but the applicant said no. The harassment

happened to the applicant daily, with the man and his friends cursing him, calling him names, pushing him, and hitting him throughout the day and night.

c. After being attacked by the man and his friends with punches and kicks, he heard one of the men say if he told anyone, they would kill him. He went AWOL the next day until the sheriff's department apprehended him. Upon his return to duty, the harassment got worse. After being beaten up and threatened by the same men again, he went AWOL for the second time and did not return.

d. He was unable to do his job due to the constant harassment, and he needed to be near his family. He was a young Soldier with no other recourse but to go AWOL. He believes he had undiagnosed post-traumatic stress disorder (PTSD) and has been diagnosed with PTSD due to the incidents that happened to him during his military service.

3. The applicant enlisted in the Regular Army on 18 September 1974, for 3 years. The highest rank/grade he held was private /E-2.

4. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on four occasions:

a. On 13 June 1975, for failing to go at the time prescribed to his appointed place of duty, on or about 19 May 1975 and for being disrespectful in language toward a superior noncommissioned officer, on or about 20 May 1975. His punishment was reduction to private/E-1, forfeiture of \$80.00 pay for one month, and three days restriction.

b. On 24 February 1976, for absenting himself from his organization from on or about 18 January 1976 and did remain so absent until on or about 18 February 1976. His punishment was reduction to private/E-1 and forfeiture of \$100.00 pay per month for two months.

c. On 5 August 1976, for absenting himself from his unit, on or about 22 July 1976 and did remain so absent until on or about 28 July 1976. His punishment was forfeiture of \$100.00 pay per month for two months, 30 days extra duty, and 14 days restriction.

d. On 9 September 1976, for failing to go at the time prescribed to his appointed place of duty, on or about 28 August 1976. His punishment was 14 days extra duty, 7 days restriction, and forfeiture of \$36.00 pay.

5. On 17 September 1976, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was

mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.

6. Three DA Forms 4187 (Personnel Action) show, effective 20 September 1976, the applicant's unit reported him AWOL, and on 19 October 1976 he was dropped from the rolls. His duty status changed to returned to present for duty when he was apprehended by civilian authorities on 15 February 1977.

7. On 16 February 1977, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with absenting himself from his organization from on or about 20 September 1976 and did remain so absent until on or about 15 February 1977.

8. On 17 February 1977, the applicant underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted he was qualified for release from active duty.

9. The applicant consulted with legal counsel on 22 February 1977 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 UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision 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. He elected to submit a statement on his own behalf.

b. In his statement, the applicant stated he entered the service because he wanted to serve his country and went AWOL for personal reasons. He felt the Army was not for him and wanted out because he had a good job in the civilian world. He understood and accepted what a UOTHC discharge meant and that he would lose all benefits, including a headstone marker, loans, and a burial flag. He further stated that if he were returned to duty, he would go AWOL.

10. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

11. On 4 March 1977, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the issuance of an UOTHC discharge in the lowest enlisted grade.

12. The applicant was discharged accordingly on 15 March 1977, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. His DD Form 214 contains the following entries:

a. He completed 1 year, 5 months, and 28 days of net active service with 11 months and 16 days of foreign service during the period covered.

b. Block 21 (Time Lost), shows the entry “387 days.”

13. The applicant provides:

a. A letter from Ms. [REDACTED] stating she works for an independent living resource center as the community living advocate-benefits/homeless reduction and prevention. She has worked with the applicant since September 2019 and had suggested he attempt to update his discharge status with veteran services. The applicant shared with her what happened to him during his time in the military. As he relayed the story to her, Ms. [REDACTED] realized how difficult and traumatic it was for him to come forth with his experience. The applicant was shaking and unable to speak at times, so they took breaks as needed.

b. A letter from the ABCMR requesting the applicant provide medical documents to support his contention of PTSD.

c. A patient care summary from Community Health Centers, showing a list of current medications and a list of multiple medical diagnoses including a PTSD diagnosis on 8 July 2022.

14. 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.

15. The Board should consider the applicant’s argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

## 16. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, integrated Personnel Electronic Records Management System (iPERMS), and the applicant's medical records in the Armed Forces Health Longitudinal Technology Application (AHLTA) and Joint Legacy Viewer (JLV) and made the following findings and recommendations: While the applicant submitted a visit summary listing a diagnosis of PTSD, there is no further information on the basis for the diagnosis. Moreover, the applicant also did not submit a psychological assessment/evaluation or treatment notes for clarification. Available in-service documentation is void of a behavioral health condition and the applicant is not service connected. Although liberal consideration was applied, without further information on the PTSD diagnosis, mitigation cannot be determined. However, the Board could accept the applicant's statement the diagnosis is secondary to harassment and threats of harm in their deliberation.

b. The applicant was discharged on 15 March 1977 under AR 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial, with an Under Other Than Honorable characterization. The charge was an AWOL from 20 September 1976 to 15 February 1977. Prior misconduct included failing to go to the time prescribed to his appointed place of duty and disrespectful language to a superior noncommissioned officer in May 1975, AWOL from 18 January to 18 February 1976, AWOL from 22 July to 28 July 1976, and failing to go to the time prescribed to his appointed place of duty in August 1976. The applicant requests an upgrade to Honorable characterization asserting harassment and threats to kill him resulted in the last two AWOLs with current diagnosis of PTSD.

c. Due to the period of service, active-duty electronic medical records are void.

d. The applicant is not service connected and VA records are void of contact.

e. The separation packet contains a September 1976 Chapter Mental Status Exam (MSE) clearing the applicant with no diagnosis.

f. The applicant's February 1977 request for discharge indicated he went AWOL for personal reasons and would go AWOL if returned to duty.

g. The applicant submitted a visit summary, dated 13 October 2022, noting the reason for visit was immunization and medication follow-up. Under Assessment and Plan, PTSD is listed as of 2022. Under Discussion, "None recorded." The medication list is void of psychiatric medications. Under the Problem List, Methamphetamine Abuse and Dependence and PTSD. The applicant did not provide documentation clarifying the basis for the diagnosis 40 years post-service. The applicant did not provide a behavioral health evaluation/assessment or any related follow up notes.

## Kurta Questions:

(1) Does the applicant have a condition or experience that may excuse or mitigate the discharge? YES. The applicant is asserting mistreatment in-service with resulting PTSD.

(2) Did the condition exist or experience occur during military service? YES. The applicant is asserting mistreatment in-service with resulting PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? UNKNOWN. If the Board accepts the assertion of mistreatment with resulting PTSD, the AWOL would be mitigated. However, the basis for the PTSD diagnosis is unknown and made 40 years' post-service; the diagnosis could be related to trauma experiences after discharge which would not mitigate the AWOL.

(4) Does the condition or experience outweigh the discharge? UNKNOWN. If the Board accepts the assertion of mistreatment with resulting PTSD, the AWOL would be mitigated. However, the basis for the PTSD diagnosis is unknown and made 40 years' post-service; the diagnosis could be related to trauma experiences after discharge which would not mitigate the AWOL.

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 PTSD 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 there being insufficient evidence to determine if his misconduct was mitigated by PTSD. 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:

<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.

6/27/2024

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, U.S. Code, 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, U.S. Code, Section 1556, 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.

3. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

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 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 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.

5. 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 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//