

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008728

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) (two)

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 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 discharged without a hearing. He was used for experiments while in the hospital. He spent years in grade without advancement. He needs help.
3. On 18 September 1967, the applicant enlisted into the Regular Army. Upon completion of training, he was awarded military occupational specialty (MOS) 35L (Avionic Communications Equipment Repairer). He was honorably discharged on 29 July 1968. His DD Form 214 confirms he completed 10 months and 12 days of net active service this period.
4. The applicant reenlisted in the Regular Army on 30 July 1968, for 4 years.
5. He was advanced in grade to E-4 on 12 August 1968.
6. The applicant received medical treatment on 22 January 1969 for violent action. The attending physician notes he appeared paranoid. He was diagnosed with an emotionally unstable personality and hospitalized for in-patient treatment from 22 January 1969 until 14 February 1969.

7. On 6 June 1969, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 1 June 1969. His punishment included forfeiture of \$100.00 pay for one month, and 14 days extra duty.
8. On 1 June 1970, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 18 June 1970.
9. On 25 June 1970, the applicant accepted NJP under Article 15 of the UCMJ, for being AWOL from on or about 1 June 1970, until on or about 18 June 1970. His punishment included forfeiture of \$145.00 pay per month for two months.
10. On 30 October 1970, the applicant was again reported as AWOL, from 0700 hours until 0715 hours.
11. On 2 November 1970, the applicant accepted NJP under Article 15 of the UCMJ, for being AWOL. His punishment included reduction in grade to E-3.
12. On 15 December 1970, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 26 March 1971.
13. On 31 March 1971, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities on 20 May 1971.
14. On 24 May 1971, the applicant was reported as AWOL a fifth time, and remained absent until he returned to military authorities on 18 January 1972.
15. On 20 January 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
16. Court-martial charges were preferred against the applicant on 1 February 1972 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL on three occasions from on or about:
 - 15 December 1970 to 28 March 1971
 - 31 March 1971 to 20 May 1971
 - 24 May 1971 to 18 January 1972
17. The applicant consulted with legal counsel on 1 February 1972, 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 an undesirable 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 his request for discharge, he 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 submitted a statement in his own behalf, stating he wanted to make the Army a career in the field of electronics. He felt he had progressed rapidly and enjoyed what he was doing. He was sent back to the States and never placed into his MOS. He went to the Inspector General with no result, so he started to go AWOL. He had no desire to continue with active duty.

18. The applicant's commander recommended approval of the applicant's request for discharge, and further recommended the issuance of an undesirable discharge.

19. 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 11 February 1972, and directed the issuance of an Undesirable Discharge Certificate.

20. The applicant was discharged on 9 March 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, Separation Program Number 246 (for the good of the service). He was assigned Reentry Codes 3, and 3B. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 2 years, 5 months, and 23 days of net active service this period with 407 days of lost time.

21. 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.

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

23. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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 18 September 1967.
- Applicant was honorably discharged on 29 July 1968, for the purpose of immediate reenlistment. He reenlisted on 30 July 1968.
- Court-martial charges were preferred against the applicant on 1 February 1972 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL on three occasions from on or about:
 - 15 December 1970 to 28 March 1971
 - 31 March 1971 to 20 May 1971
 - 24 May 1971 to 18 January 1972
- He submitted a statement in his own behalf, stating he wanted to make the Army a career in the field of electronics. He felt he had progressed rapidly and enjoyed what he was doing. He was sent back to the States and never placed into his MOS. He went to the Inspector General with no result, so he started to go AWOL. He had no desire to continue with active duty.
- Applicant was discharged on 9 March 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, Separation Program Number 246 (for the good of the service). He was assigned Reentry Codes 3, and 3B. He was discharged in the lowest enlisted grade and his service characterized as UOTHC.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, 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 discharged without a hearing. He was used for experiments while in the hospital. He spent years in grade without advancement. He needs help. He further indicates he is seeking an upgrade in order to obtain VA benefits.

e. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy medical documentation submitted by the applicant shows a psychiatry consult on 22 January 1969 due to violent action, the note indicates the applicant appeared paranoid. The applicant was psychiatrically hospitalized from 22 January 1969 until 14 February 1969. He was diagnosed with Emotionally Unstable Personality Disorder and while in the hospital received medication and therapy. On 20 January 1972, the applicant underwent a mental status evaluation. No significant mental illness was identified, and he was psychiatrically cleared to participate in any

administrative action deemed appropriate by the command. A medical examination for separation, also dated 20 January 1972, shows the applicant endorsed shortness of breath and nervous troubles. The examining provider determined he was medically qualified for separation but notes his psychiatric hospitalization in 1969 was due to paranoia. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service evidencing a BH condition or diagnosis.

f. Based on the available information, it is the opinion of this Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct.

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 was psychiatrically hospitalized during his time in service.

(2) Did the condition exist or experience occur during military service? Yes. Although the applicant did not assert any BH condition in his application, the record indicates he was diagnosed with a BH condition while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was psychiatrically hospitalized, while in military service, due to a psychotic episode and diagnosed with Emotionally Unstable Personality Disorder, which is no longer used as a diagnosis. In the current DSM-5, the diagnosis would be Borderline Personality Disorder which is not ordinarily a mitigating condition under liberal consideration. However, under conditions of extreme duress, an individual with Borderline Personality Disorder can develop a Brief Reactive Psychosis which, in the applicant's case, manifested as paranoid ideation. Such a psychotic condition falls under the purview of liberal consideration and provides mitigation for certain misconduct. Overall, the applicant's record indicates he experienced paranoia during an acute episode that led to his hospitalization. There is a nexus between paranoia and avoidance, thus mitigating the applicant's repeated episodes of AWOL.

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 considered the advising official finding a nexus between paranoia and avoidance, thus mitigating the applicant’s repeated episodes of AWOL. The review found sufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. The Board noted the opine stating the applicant was psychiatrically hospitalized, while in military service, due to a psychotic episode and diagnosed with Emotionally Unstable Personality Disorder, which is no longer used as a diagnosis.

2. However, the Board notwithstanding the advising official findings, determined based on the applicant’s five separate periods of AWOL there is insufficient evidence of in-service mitigating factors to overcome the over 16 months of continuous AWOL. The applicant provided no post service achievements or character letters of support to attest to his honorable conduct for the Board to weigh a clemency determination. The Board determined the applicant has not demonstrated by an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an under honorable conditions (general) or honorable discharge. Therefore, the Board 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 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.

3/25/2024

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