

IN THE CASE OF: ██████████

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230008747

APPLICANT REQUESTS: an upgrade of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 May 1980 to reflect his character of service as under honorable conditions (general) vice 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)
- DD Form 214 (Report of Separation from Active Duty), 25 September 1978
- DD Form 214, 30 May 1980
- Clinical Summary Report
- Letters of Support/Character References
- Letter from Applicant's Doctor
- Reservations at the ██████████

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 indicated on his application that he suffers from post traumatic stress disorder (PTSD). He states he is seeking to receive an upgrade of his discharge from UOTHC to under honorable conditions (general). During the incident that caused the applicant's discharge, he suffered from undiagnosed PTSD.

3. The applicant provides the following documents:

a. Clinical Summary Report, dated 14 March 2022, which shows, in pertinent part, based on the information provided, the applicant met diagnostic criteria for PTSD. The applicant was diagnosed with:

- PTSD

- Alcohol Use Disorder/Severe, in sustained remission
- Opioid Use Disorder/Severe, in sustained remission
- Problems Related to Other Legal Circumstances

b. Letters of support/character references, which state, in effect:

(1) From the applicant's brother, a U.S. Army retired colonel, dated 31 March 2023: since the applicant's release from prison on 4 Jun 2021, he has shown himself to be a mature, responsible individual dedicated to helping others. Being released from prison after 10 years and adapting to modern society was a hard challenge for the applicant. The applicant has successfully learned to use the tools and opportunities of today's world to become a functioning member of today's society, while avoiding many pitfalls.

(2) From an Army veteran and mental health practitioner for the [REDACTED], dated 24 March 2023: the author has known the applicant on a personal level since June 2021. The author has seen the applicant take on additional commitments such as take on a lead role with [REDACTED] program where he goes into the prison to carry the message of recovery to inmates who suffer from the disease of addiction. The applicant has always shown a high degree of integrity, responsibility, and demonstrates a giving and generous nature with his free time. The author is intrigued and inspired by the applicant's testimony as well as his continued commitment to serve the most vulnerable in their community.

(3) From [REDACTED] dated 24 March 2023: the author is a member of a 12-step program and met the applicant while he was incarcerated. The author was bringing in a Narcotics Anonymous panel to the institution and the applicant was an active member of the institution's 12 step group. Upon release, the applicant and author saw each other at a 12-step meeting and the author has been the applicant's sponsor since that time. The applicant has been off parole and being of service long enough that the institution allows the applicant to go back in as a free man to help carry the message that the lie is dead and they do recover. The dedication, integrity to give the applicant's time to service of those still in the disease is inspiring. Due to the applicant's military service, he is able to help on panels to other veterans seeking recovery at a facility dedicated to veterans.

(4) From a Regional Detox Manager, dated 3 April 2023: the author has known the applicant since June 2021. She can with confidence say that the applicant is ethical and professional and has boundaries. The applicant provides volunteer services at the author's residential drug treatment facility on a weekly basis and has been a great source of information for the clientele.

(5) From the Executive Director of ██████████ dated 6 April 2023: The applicant has over 13 years of continuous sobriety. He serves as a role model for others in recovery, in the military, and in the prison system. The author has known the applicant since 7 June 2021. The applicant has been pursuing his goal of making a difference in the lives of other in the community who struggle with addition. The applicant is honest, dependable, and incredibly hard working. Without a doubt, the author confidently recommended the applicant for a change in his discharge status.

(6) From ██████████ dated 5 April 2023: the author has known the applicant for over 5 years, meeting in a 12-step meeting. The applicant serves their community by carrying the message of recovery into their local jails and institutions. They also share the experience of being U.S. Army veterans. The applicant has been a positive force in his community through facilitating a narcotics anonymous meeting at the veteran's recovery home and serving his fellowship as members of their area and regional subcommittees.

(7) From ██████████ dated 5 April 2023: the author has known the applicant for the previous year and can attest to the applicant's admirable qualities. The applicant has consistently demonstrated integrity, dedication, and a strong work ethic. The author has witnessed the applicant take on challenging tasks with gusto, and has continuously exceeded expectations. The applicant has shown great maturity in taking accountability for his past mistakes. The applicant has a genuine desire to rectify his pas actions and is actively working towards bettering himself. The author believes the applicant's sincerity in making amends and his willingness to take responsibility for his actions are indications of the kind of character that is worthy of recognition and respect. It would be a great disservice to the applicant and our country to deny him the opportunity to make significant contributions to society and the community on account of the UOTHC discharge. The author strongly urged the Board to consider the applicant's recent accomplishments and rectify his military record.

(8) From ██████████ dated 5 April 2023: the author met the applicant in 2015 at a narcotics anonymous meeting at the prison. The author has spoken to the applicant continuously over the years until the applicant was released from prison. He and the applicant go to meetings in the prison and the applicant is a good friend of the author.

(9) From Father ██████████ a Catholic Chaplain, dated 5 April 2023: the Father has been the Catholic Chaplain at ██████████ for 16 years. He has come to know the applicant for over five years. The applicant worked for the Father in the Catholic Chape ██████████ as a janitor and eventually became a clerk with the Father setting up for the celebration of Mass. The applicant was someone the Father could count on to help hm as well as those who came to the chapel. The Father saw the applicant grow into a person that became very interested in helping other through his involvement in alcoholic anonymous. The Father has seen the applicant continue to grow and

encourage others to dealing with their issues in a supportive way. The Father wanted to recommend the applicant to the Board as a man who has worked hard in becoming a member of society that most people would like to live next door to.

(10) From ██████ dated 10 April 2023: the applicant went to the author and asked for help regarding cleaning up the wreckage of his past. The author believes the applicant has an honest desire to take responsibility for and amend his past behavior. The author has known the applicant since the mid 1990s when they met at a 12 step fellowship meeting and the author became the applicant's sponsor. Somewhere along the line the applicant chose to start drinking and using. The author watched from a distance as the applicant self-destructed and eventually ended up in prison. While incarcerated, the applicant reached out to the author. He had a desire to stay clean and sober in prison. After the applicant's relapse, the author had a difficult time trusting the applicant. They ran into each other at a meeting in June 2021 and have spent a lot of time together. It is obvious to the author the applicant stayed clean and sober while he was locked up and is still working a program of recovery. The applicant's commitment to serving other is inspiring.

(11) From ██████ dated 8 April 2023: the author met the applicant through the mail in a program called Sponsorship ██████. The applicant had been locked up for a while and wanted to work with someone from outside the prison. The author eventually became the applicant's sponsor. They worked on all 12 steps of narcotics anonymous. The author has seen the great growth in the applicant. The author is blessed to know the applicant and to see his growth through the program.

(12) From ██████, dated 31 March 2023: the author knew the applicant for over a year. They met while volunteering as members for the Public Relations Subcommittee of the ██████ Narcotics Anonymous. The applicant also gives his time to their ██████ Sponsorship committee, helping incarcerated men improve their lives, increase their changes at recovery, and find a new way to live. The applicant is one of the most dedicated, hardworking, and competent people the author has had the pleasure of doing service work with in any capacity. The applicant is also compassionate, kind, and never misuses the opportunity to help others. The author recommended the applicant for an upgrade of his discharge to honorable.

(13) From ██████ dated 12 April 2023: the author has known the applicant for two years. The applicant was of upstanding character and service towards others. The author could openly and honestly say the applicant operates at a high degree of integrity and honesty.

(14) From ██████ dated 5 April 2023: the author has known the applicant for over 5 years when they met at a 12 step meeting. When the author found out the

applicant had an UOTHC discharge, he strongly encouraged the applicant to petition for an upgrade. The author feels the applicant is very deserving of the process.

(15) From the Captain of the Department of Forestry and Fire Protection ██████████ Conservation Camp, dated 5 May 2021; the letter served as documentation of the service of the applicant, as an inmate, had been a member of the ██████████ Conservation Camp workforce since 14 October 2019. The applicant displayed his culinary skills, which he attained during his culinary academic attendance. The applicant was appreciated and recognized by management staff at ██████████ as it has proven beneficial to the overall function and success of ██████████.

c. Letter regarding the applicant's psychological evaluation, dated 25 March 2023. The applicant had a psychological evaluation on 14 March 2022 to assess for mental healthy symptoms and treatment recommendations. The applicant had been under the author's care since 22 November 2022 and continued to participate in treatment along with adjunct services to address goals of reducing trauma related symptoms to prevent further legal impairments and learn to manage difficult feelings so he could build and sustain meaningful long term healthy relationships with family and others.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of the United States) shows on 6 May 1977, the applicant enlisted in the U.S. Army for a period of three years and on 26 September 1978, he reenlisted in the U.S. Army for a period of 3 years.

b. DD Form 214 shows the applicant entered active duty on 6 May 1977 and was honorably discharged for immediate reenlistment on 25 September 1978. He had completed 1 year, 4 months, and 20 days of net active duty service.

c. Memorandum subject Request for Deferment of Confinement, dated 21 June 1979, shows the applicant requested that the unserved portion of his sentence to confinement at hard labor be deferred until final action was taken on his court-martial. On 22 June 1979, the applicant's request was approved.

d. Special Court-Martial Order Number 83, published by Headquarters, 1st Armored Division, dated 20 July 1979 shows the applicant plead guilty to and was found guilty of being absent without leave (AWOL) from on or about 5 April 1979 to on or about 19 April 1979, and wrongful appropriation of a privately owned vehicle, the property of another Soldier, on or about 6 April 1979. His sentence included confinement of hard labor for a period of four months, forfeiture of \$279 for four months, and reduction to the grade of private/E-1. The sentence was adjudged on 7 June 1979. On 20 July 1979, the convening authority approved the adjudged sentence and ordered it dully executed.

e. DA Forms 2627 (Record of Proceedings Under Article 15, UCMJ) show the applicant accepted nonjudicial punishment on:

(1) 13 August 1979 for failing to go to his appointed place of duty on 12 August 1979. His punishment included restriction and extra duty for 14 days and forfeiture of 7 days pay for one month. The applicant did not appeal his punishment.

(2) 6 December 1979 for failing to go to his appointed place of duty on 3 December 1979. His punishment included forfeiture of \$14 and extra duty for 14 days. The applicant did not appeal his punishment.

(3) 15 February 1980 for going AWOL from on or about 11 January 1980 to on or about 4 February 1980. His punishment included forfeiture of \$224 per month for two months, extra duty for 30 days, and restriction for 15 days. The applicant did indicate if he appealed the punishment.

(4) 21 March 1980 for going AWOL from on or about 4 March 1980 to on or about 11 March 1980. His punishment included forfeiture of \$224 per month for two months and extra duty and restriction for 30 days. The applicant did appeal his punishment.

f. DA Form 4187 (Personnel Action), dated 12 September 1979, changed the applicant's pay entry basic day, basic active service date, basic entry service date, and expiration term of service for being AWOL. From 5 April 1979 to 18 April 1979 and from 23 April 1979 to 21 June 1979.

g. DA Form 3822-R (Report of Mental Status Evaluation), dated 11 February 1980 shows the applicant had no significant mental illness and was psychiatrically cleared for any administrative action deemed appropriate by his command.

h. Memorandum subject Separation Under the Provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), dated 10 April 1980 shows the applicant's commander was initiated separation of the applicant for frequent incidents [of misconduct]. The applicant could receive a discharge UOTHC.

i. Memorandum regarding the initiation of separation from the applicant's commander, dated 10 April 1980 wherein the commander was recommending the applicant be required to appear before a board of officers to determine whether he should be discharged.

j. On 11 April 1980, the applicant was advised by his consulting counsel of the basis for the contemplated action to separate him from the Army. The applicant waived consideration of his case by a board of officer, waived personal appearance before a

board of officers, declined to submit statements on his own behalf, and waived consulting counsel.

k. The applicant's chain of command recommended approval of the separation. On 28 May 1980, the appropriate approval authority approved the separation of the applicant for misconduct, waived the rehabilitative requirements, and directed the applicant be discharged with an UOTHC discharge.

l. On 30 May 1980, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he entered active duty on 26 September 1978 and was discharged on 30 May 1980. He had completed 1 year, 4 months, and 20 days of active duty service this period with 1 year, 4 months, and 20 days of prior active duty service. He had lost time from 5 April 1979 to 18 April 1979, 23 April 1979 to 21 June 1979, 11 January 1980 to 3 February 1980 and 4 March 1980 to 10 March 1980. He was discharged for misconduct - frequent incidents of a discreditable nature with civil or military authorities. His character of service was UOTHC, his separation code was JKA, and his reenlistment code was RE-3.

5. Based on the applicant's assertion he suffers from PTSD and the Clinical Summary Report, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

#### 6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to general for the period of service ending on 30 May 1980. He selected PTSD on his application as related to his request.

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 6 May 1977 and reenlisted on 26 September 1978.
- DD Form 214 shows the applicant entered active duty on 6 May 1977 and was honorably discharged for immediate reenlistment on 25 September 1978.
- Special Court-Martial Order Number 83, published by Headquarters, 1st Armored Division, dated 20 July 1979 shows the applicant plead guilty to and was found guilty of being absent without leave (AWOL) from on or about 5 April 1979 to on or about 19 April 1979, and wrongful appropriation of a privately owned vehicle, the property of another Soldier, on or about 6 April 1979.
- Applicant accepted nonjudicial punishment on:

- 13 August 1979 for failing to go to his appointed place of duty on 12 August 1979.
- 6 December 1979 for failing to go to his appointed place of duty on 3 December 1979.
- 15 February 1980 for going AWOL from on or about 11 January 1980 to on or about 4 February 1980.
- 21 March 1980 for going AWOL from on or about 4 March 1980 to on or about 11 March 1980.
- Applicant was discharged on 30 May 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33b, misconduct - frequent involvement in incidents of a discreditable nature with civil or military authorities. His service was 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, two DD Forms 214, his ABCMR Record of Proceedings (ROP), multiple character reference letters, medical documentation, 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 indicated on his application that he suffers from post-traumatic stress disorder (PTSD). He states he is seeking to receive an upgrade of his discharge from UOTHC to under honorable conditions (general). During the incident that caused the applicant's discharge, he suffered from undiagnosed PTSD.

e. No active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation evidencing a Mental Status Evaluation, dated 11 February 1980, which indicates the applicant had no significant mental illness, was mentally responsible, and psychiatrically cleared for any administrative action deemed appropriate by his command.

f. Applicant is not service connected, possibly due to the characterization of his discharge, and no VA electronic records were available for review. A clinical summary report, dated 14 March 2022, states that while in military service the applicant became addicted to heroin, cocaine, and alcohol. After his discharge from military service, his addiction worsened and on 31 December 2009 he was arrested for assault with a firearm upon a peace officer and sentenced to 16 years in prison. Based on the applicant's self-report this summary diagnosed him with: PTSD; Alcohol Use Disorder/Severe, in sustained remission; Opioid Use Disorder/Severe, in sustained remission; and Problems Related to Other Legal Circumstances. Of note, the reported



stressor/index event of being harassed by law enforcement does not meet diagnostic criteria for PTSD.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is minimal evidence the applicant had a behavioral health condition during military service that partially mitigates his discharge.

**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 selected PTSD as related to his request.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant submitted documentation that does not meet diagnostic criteria for PTSD. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board. Given the nexus between PTSD and avoidance, the applicant's failing to go to his appointed place of duty and multiple AWOL's would be mitigated by his BH condition. However, his theft of another soldier's vehicle is not mitigated by his BH condition since PTSD does not impact one's ability to distinguish right from wrong and act in accordance with the right.

**BOARD DISCUSSION:**

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct in the applicant's record, some of which was of a criminal nature, as well as the findings of the medical advisor stating only partial mitigation existed for the misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the characterization of service.

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 for correction of the records of the individual concerned.

5/20/2024

X █

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CHAIRPERSON  
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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. AR 635-200 (Personnel Separations Enlisted Personnel) in effect at the time sets forth the basic authority for the separation of enlisted personnel. It provides:

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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Only a general court-martial convening authority may approve an honorable discharge or delegate approval authority for an honorable discharge under this provision of regulation.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKA is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

6. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; TBI; 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 sexual assault or sexual harassment was unreported, or 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. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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, 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.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//