

IN THE CASE OF: ██████████

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008842

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 12 February 1981
- Department of Veteran's Affairs (VA) Form 21-4138 (Statement in Support of Claim)
- VA Form 20-0995 (Decision Review Request: Supplemental Claim)

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 made a bad choice when he was young and it has regretted it ever since. He was never a bad person, nor was he a violent man. He was not on drugs or alcohol, he just made a bad choice. If he could do it all over again, he would make a better choice. He has worked in maintenance for 40 years and has been a minister for 25 years. He has carried this burden way too long. He lives a quiet life and has worked hard to keep to himself. Additionally, the applicant annotated post-traumatic stress disorder (PTSD) as an issue/concern related to his request.
3. The applicant provides:
 - a. A VA statement in support of his claim, which states, in pertinent part, he had a stressful training experience and mentally checked out. He went home and broke his leg

and was put in a cast and his brother drowned. His mind, body, and soul were in complete disarray. He began drinking and experimenting with drugs.

b. A VA decision review request which shows the discharge determination block highlighted, but contains no information.

4. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 7 September 1977.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 18 (Appointments and Reductions):

- private (PVT)/E-1: 7 September 1977
- private (PV2)/E-1: 7 March 1978
- PVT/E-1: 28 January 1981

c. On 22 December 1980, court-martial charges were preferred against the applicant for one specification of being absent without leave (AWOL) from 8 August 1978 to 30 November 1980.

d. On 23 December 1980, after consulting with legal counsel, the applicant requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because charges were preferred against him, each of which authorizes the imposition of a bad conduct or dishonorable discharge.

(1) He acknowledged:

- he was making the request of his own free will and have not been subjected to any coercion whatsoever by any person
- he has been advised of the implications that are attached to it
- by submitting this request, he acknowledged he was guilty of the charge against him or of a lesser included offense therein contain which also authorizes the imposition of a bad conduct or dishonorable discharge
- under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service
- if his request for discharge is accepted, he may be discharged under conditions other than honorable
- he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that

he may be deprived of his rights and benefits as a veteran under both Federal and State law

(2) He provided a written statement for consideration, which states he is 22 years old with a 12th grade education level. He was active duty and joined because he was unemployed at the time and needed the money. He was like a discharge because of the pressures and family problems.

e. In connection with the applicant's separation proceedings, a mental status evaluation was conducted on 19 December 1980. The results of the evaluation show the applicant was mentally responsible; his behavior was normal, he was fully alert and oriented, his mood was unremarkable, his thinking process was clear and thought content was normal.

f. On 25 January 1981, the separation authority approved the applicant's discharge for the good of the service. He directed the applicant receive a discharge under other than honorable conditions. If service member is serving in a pay grade above E-1 at the time of this action, service member will be reduced to PVT/E-1 prior to the execution of the discharge.

g. On 12 February 1981, he was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 1 month, and 14 days of active service. It also shows in:

- item 4a (Grade, Rate or Rank): PV!
- Item 4b (Pay Grade): E-1
- Item 12h (Effective Date of Pay Grade): 28 January 1981
- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Marksmanship Qualification Badge with Hand Grenade Bar
- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): Chapter 10, AR 635-200
- item 26: JFS
- item 27 (Reenlistment Code): 3 & 3B
- item 28 (Narrative Reason for Separation): Administrative Discharge – Conduct Triable by Court-Martial

5. On 1 September 2023, a representative from the Army Review Boards Agency requested a copy of the applicant's medical documentation associated with his claim of PTSD from the applicant. To date, the applicant has not provided a response.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. Also by regulation, upon determination that a member is to be separated with a discharge certificate under other than honorable conditions, the convening authority will direct reduction to the lowest enlisted grade by the reduction authority.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. The applicant requests an upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related to PTSD.

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 7 September 1997; 2) On 22 December 1980, court-martial charges were preferred against the applicant for one specification of being absent without leave (AWOL) from 8 August 1978 to 30 November 1980; 3) On 23 December 1980, after consulting with legal counsel, the applicant requested discharge for the good of the service under the provisions of Chapter 10, AR 635-200; 4) On 25 January 1981, the separation authority approved the applicant's discharge for the good of the service and on 12 February 1981 he was discharged accordingly.

c. The VA electronic medical record (JLV), and ROP were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile was a Report of Mental Status Evaluation dated 19 December 1980, that reflects that the applicant was mentally responsible; his behavior was normal, he was fully alert and oriented, his mood was unremarkable, his thinking process was clear and thought content was normal, and that he had the mental capacity to understand and participate in proceedings. A review of JLV was void of any treatment history for the applicant. No civilian BH records were provided for review.

d. The applicant is requesting an upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to PTSD. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provide no documentation supporting his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence to find his misconduct

was related to or mitigated by PTSD and therefore insufficient evidence to support an upgrade for reasons of medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. However, the applicant contends his misconduct was related to PTSD, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

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 his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provide no documentation supporting his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence to find his misconduct was related to or mitigated by PTSD and therefore insufficient evidence to support an upgrade for reasons of medical mitigation.

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 lengthy AWOL offense leading to the applicant's separation and the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's 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.

5/15/2024

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate, if such is merited by the Soldier's overall record during the current enlistment.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for career management of Army enlisted personnel. Paragraph 8-11 (Approved for Discharge from Service Under Other Than Honorable Conditions) states when the general court-martial authority determines that a Soldier is to be discharged from the service under other than honorable conditions, he will be reduced to the lowest enlisted grade. Board action is not required for this reduction. The commander having general court-martial jurisdiction will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier be reduced to private, E-1.

4. 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 post-traumatic stress disorder (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.

5. 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, 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, 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.

6. 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 based on 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.

7. Section 1556 of Title 10, United States Code, 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//