

IN THE CASE OF: ██████████

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230008843

APPLICANT REQUESTS: an upgrade of his under conditions other than honorable discharge to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 wants to be able to receive disability. He was told his wife was expecting their child and his recruiter told him that he would be able to stay stateside. However, they were shipping him off to Germany. Additionally, the applicant annotated on his application "post-traumatic stress disorder" as a related issue/condition related to his request.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 23 November 1974.
  - b. On 9 October 1975, the applicant accepted nonjudicial punishment for disrespect in language toward his superior noncommissioned officer by saying to him "I'm not listening to a mother-fucking thing that you say," or words to that effect. His punishment consisted of reduction to the grade of private/E-2, restriction to the brigade area for a period of 14 days, extra duty for a period of 14 days, and to forfeit \$50.00 pay per month for 1 month.
  - c. On 6 November 1975, the applicant's commander initiated a personnel action which shows his duty status changed from present for duty (PDY) to absent without leave (AWOL) with an effective date of 5 November 1975.

d. On 5 December 1975, the applicant's commander initiated a personnel action which shows his duty status changed from AWOL to dropped from rolls (DFR).

e. On 1 June 1977, the applicant's commander initiated a personnel action which shows his duty status changed from DFR to returned to military control with an effective date of 16 May 1977.

f. On 20 May 1977, charges were preferred on the applicant for one specification of AWOL from 5 November 1975 to 16 May 1977.

g. On 26 May 1977, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood:

- he may request discharge for the good of the service because charges have been preferred against him under the Uniform Code of Military Justice (UCMJ), which authorize the imposition of a bad conduct or dishonorable discharge
- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- he was advised of the implications that are attached to it
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- he had the opportunity to consult with appointed counsel for consultation
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

h. On 6 June 1977, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10. The applicant would be furnished a Discharge Certificate Under Other Than Honorable Conditions. The reason and authority for discharge will be shown as SPD: KFS.

i. On 15 June 1977, he was discharged accordingly. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year and 12 days of active service with 558 days lost from 5 November 1975 to 15 May 1977. His DD Form 214 also shows he received an under conditions other than honorable characterization of service and was issued a DD Form 794A.

4. His record contains a letter from the Army Discharge Review Board (ADRB), dated 30 July 1979, which shows after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly discharged. His request for a change in the type and nature of discharge was denied.
5. On 1 September 2023, a representative for the Army Review Boards Agency (ARBA) requested medical documentation pertaining to the applicant's PTSD. The applicant did not respond.
6. By regulation (AR 635-200), a Soldier who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.
7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Under Other Than Honorable Conditions (UOTHC) discharge to 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 23 November 1974.
- On 9 October 1975, the applicant accepted nonjudicial punishment for disrespect in language toward his superior noncommissioned officer by saying to him "I'm not listening to a mother-fucking thing that you say," or words to that effect.
- On 6 November 1975, the applicant's commander initiated a personnel action which shows his duty status changed from present for duty (PDY) to absent without leave (AWOL) with an effective date of 5 November 1975.
- On 20 May 1977, charges were preferred against the applicant for one specification of AWOL from 5 November 1975 to 16 May 1977.
- On 26 May 1977, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
- Applicant was discharged on 15 June 1977 under the provisions of AR 635-200, Chapter 10. His DD Form 214 shows he received an Under Other Than Honorable Conditions (UOTHC) characterization of service.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his 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 wants to be able to receive disability. He was told his wife was expecting their child and his recruiter told him that he would be able to stay stateside. However, they were shipping him off to Germany. Additionally, on his application he selected "post-traumatic stress disorder" and "other mental health" as related to his request.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from his time of service evidencing a behavioral health condition. No VA electronic medical records were available for review and the applicant is not service connected. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD or other mental health condition. On 1 September 2023, a representative for the Army Review Boards Agency (ARBA) requested medical documentation pertaining to the applicant's PTSD. The applicant did not respond.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. However, Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

#### 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 self-asserts PTSD and other mental health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD and other mental health condition, he did not provide any medical documentation substantiating any diagnosis.

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 short term of honorable service completed prior to the lengthy AWOL offense leading to the applicant's separation, as well as the findings and recommendation 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 and/or narrative reason for separation.

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 offense, 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. 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.

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 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.

5. 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.

6. 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//