

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008907

APPLICANT REQUESTS:

- An appearance before a Traveling Board Panel and upgrading his under other than honorable conditions (UOTHC) discharge. [NOTE: The ABCMR does not have Traveling Board Panels.]
- An upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge

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

- DD Form 293 (Application for the Review of Discharge) in lieu of the DD Form 149
- Three Certificates of Training
- Two Enlisted Evaluation Reports (EER)
- An Honorable Discharge Certificate for the period ending 8 November 1979
- His wife's Death Certificate
- His Under Other Than Honorable Conditions Discharge Certificated for the period ending 7 October 1985

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:

a. His wife had committed suicide (8 December 1980) and he was left with a two year old son. He tried going through his Commander, Battalion Command, Sergeant Mayor, and the Chaplain, filing for a hardship discharge, but got no help. His command was adamant that he had to go to Germany. He felt his only option was to go absent without leave (AWOL) and be with his son. When he went to personnel to get out, he was told he needed to stay three weeks to get an honorable discharge, but he could

only stay two weeks, or he would lose his civilian job. So, he took a Chapter 10 since his child came first.

b. In his 14 page statement, the applicant elaborates on his personal and military situation, the death of his wife, and the efforts he made to resolve them. He got reassigned to a unit close to where his son was only to later find out that the unit was scheduled to go to Germany and no exceptions were being allowed. He wanted out of the service to be with his son. From the point of his wife's death, his career and personal life took a downward turn including an incident that put his son in the hospital with a fractured femur. He started drinking heavily and when his situation worsened at work he decided to go AWOL. On returning, he was advised that he was charged with theft of a chainsaw and a demo box. After being cleared of the charges, he again went AWOL from 1982 to 1985, and voluntarily returned. He accepted a Chapter 10 discharge, because he could not wait an extra week without losing his civilian job.

3. On the applicant's DD Form 293, he indicates other mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation. However, the applicant has not provided any official documentation to support this contention.

4. A review of the applicant's service record shows he enlisted in the Regular Army for three years on 11 March 1977. He completed training with award of the military occupational specialty 12B (Combat Engineer).

5. He reenlisted on 9 November 1979 and the highest grade he held was E-5. The applicant's wife committed suicide on 8 December 1980.

6. The record contains eight DA Forms 4187 (Personnel Action) documenting a series of periods of AWOL 6 May 1982 and 20 July 1982 and a form dated 15 August 1985.

a. The 1985 form (amended copy) states the applicant was apprehended by civilian authorities on 10 August 1985 in Salem, IN for civilian charge of driving while intoxicated and confined in Washington County Jail, Salem, IN pending court appearance.

b. On 12 August 1985, he appeared in City Court, Salem, IN and was fined \$461.00. On 13 August 1985, he paid the fine and returned to military control.

c. The applicant was pending determination of his AWOL/dropped from the rolls status from 522nd Engineer Company, Fort Knox, KY.

7. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing. Further, it does not contain a copy of an Enlisted Record Brief, Enlisted Qualification Record.

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was discharged on 7 October 1985, in the grade of E-1, under the authority of Army Regulation 635-200 (Personnel Separations – Enlisted), Chapter 10, with an under other than honorable conditions characterization of service. His DD Form 214 shows:

- His narrative reason for separation of for the good of the service - in lieu of trial by court-martial
- His Separation Code of KFS and Reentry Code 3/3B/3C
- He completed 5 years, 4 months, and 24 days of net active service
- He was placed on 49 days in excess leave
- He had 1169 days (3 years, 2 months, and 12 days) of lost time with only his last period of AWOL being listed.
- His awards are listed as the: Army Good Conduct Medal, Army Service Ribbon, Overseas Service Ribbon, NCO Development Ribbon (Primary Level), Air Assault Badge, and Expert Qualification Badge w/ Rifle and Hand Grenade Bars
- The Remarks block listed his reenlistment; but, did not list his continuous honorable service

9. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process. The applicant has provided no evidence that would indicate the contrary.

10. The Army Review Boards Agency, Case Management Division requested that the applicant provide copied of medical records to support his mental health issues on 1 September 2023. There is no reply of record.

11. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

12. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable Conditions discharge be upgraded to Honorable due to experiencing other mental health problems during his time in service. 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 Regular Army on 11 Mar 1977 and subsequently reenlisted 09 Nov 1979. His military occupational specialty was Combat Engineer. His awards included the Army Good Conduct Medal, Army Service Ribbon, Overseas Service Ribbon, NCO Development Ribbon (primary level) and Air Assault Badge.
- Applicant noted, “his wife had committed suicide (8 December 1980) and he was left with a two year old son. He tried going through his Commander, Battalion Command, Sergeant Mayor, and the Chaplain, filing for a hardship discharge, but got no help. His command was adamant that he had to go to Germany. He felt his only option was to go absent without leave (AWOL) and be with his son.”
- Applicant was charged with going AWOL 04-05 May 1982, 02-08 Jun 1982 and from 17 Jun 1982 - 10 Aug 1985 when picked up by local authorities in Salem, IN for a DUI. He was returned to military authority after paying a fine.
- The applicant’s separation packet is unavailable for review. However, the applicant’s service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant “Under Other Than Honorable Conditions” on 07 Oct 1985.

b. 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), Personal Statement, his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

c. This applicant asserted that other mental health issues were mitigating factors in his discharge. He subsequently reversed himself by noting, “please let me know if a new DD form 293 needs to be filled out and signed or if the current form can be fixed removing the mental health as I am not suffering from mental health. My issue was hardship not mental health.” His service record and supporting documents did not provide any indicators of behavioral health issues other than a potential problem with alcohol as a result of his DUI. Based on this documentation in its entirety, there is a lack of evidence the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

d. Per the applicant’s VA EHR, he is not service connected for any medical or behavioral health concerns. There was no data available in the JLV record system.

e. In summary, although applicant is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is the applicant’s own assertion on the DD Form 149 of other mental health problems (even though he

subsequently denied any behavioral health problems in a letter (05 Sep 2023). Per a lengthy letter applicant wrote about the circumstances that led to his AWOL episodes, he noted several situational circumstances that were very stressful to contend with following the completed suicide of his spouse. This included a concerted effort, unsuccessful as it was, to be approved for a hardship discharge in order to care for his young son who was without his mother. Ultimately, he chose to go AWOL for an extended time period and reportedly started consuming large quantities of alcohol. Bearing these factors in mind and after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is evidence of a mitigating condition (unspecified trauma- and stressor-related symptoms) that significantly contributed to the specific misconduct of alcohol abuse and AWOL episodes. Applicant's own account of the stressful circumstances that cumulatively impacted his judgment (previously viewed as an exceptional soldier) and psychological stability suggest that he more likely than not experienced unspecified trauma- and stressor-related symptoms contributing to 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, he more likely than not experienced Unspecified trauma- and stressor-related symptoms contributing to his alcohol abuse and AWOL episodes while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is self-reported evidence he more likely than not encountered Unspecified trauma- and stressor-related symptoms while on active duty as a result of his spouse's suicide, his need to care for his son, conflicting expectations of his Army unit vis-à-vis child care needs, and an escalation of coping difficulties.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of alcohol abuse and AWOL episodes as Unspecified trauma- and stressor-related symptoms are often associated with the emergence or escalation of alcohol use and going AWOL.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The Board

carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant's separation packet is not available. However, the applicant's DD Form 214 reveals he was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the character service.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding evidence of a mitigating condition (unspecified trauma- and stressor-related symptoms) that significantly contributed to the specific misconduct of alcohol abuse and AWOL episodes. The Board determined the applicant's service clearly did not rise to the level required for an honorable discharge (given his extensive AWOL/misconduct); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

c. The Board also noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

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: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 7 October 1985 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change
- Remarks: Add "Continuous Honorable Active Service from 19770311 to 19781109" and "Soldier has completed first full term of service" and Immediate Reenlistment from 77/03/11 to 79/11/09

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his discharge to fully honorable.

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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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
 - c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//