

IN THE CASE OF: ██████████

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230008942

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record), 14 August 1981
- Standard Form (SF) 88 (Report of Medical Examination), 6 May 1982
- SF 93 (Report of Medical History), 6 May 1982
- Orders Number 136-433, 15 July 1982
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 July 1982
- Applicant Photo, undated

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, in effect, he is requesting a discharge upgrade based on sexual discrimination and inequitable treatment inconsistent with traditions and policies of the service.

a. In 1982, his spouse left him and their two children and flew back to the states while he was assigned in Germany. He had no family support, and he was inadequately prepared for the sudden transformation to a single parent. Instead of his unit being supportive and understanding while he was experiencing significant mental and emotional turmoil, he was ridiculed for not having his own resources to care for his children or keeping his spouse in line. His spouse was their childcare provider. He was ill equipped to support his children and effectively continue his duties with his unit and the service.

b. The Armed Forces recognized the emotional and mental toll on its service members and made changes, only after he was discharged. Now the Armed Services has a multitude of programs, webinars, and podcasts that not only recognize the importance of family but support military members before they reach crisis level. Had counseling, training, or support groups been available before 1982 to help him gain the life skills to cope with being a single parent, he would have been able to successfully complete his full enlistment. Being a single parent was hard enough, but the stress and ridicule he experienced would not have happened if he had been a female. He was branded with the stigma of being too weak to keep his family together, while also being expected to project the "Alpha" male image.

c. He is proud of his military service. Since being discharged he has done many positive things with his life, including college, and retiring as a Supervisor of Regional Operations.

3. The applicant provides the following:

a. A copy of his DA Form 2-1 dated 14 August 1981.

b. A Report of Medical Examination and Report of Medical History, dated 6 May 1982.

c. Orders Number 136-433, issued by Headquarters, 7th Infantry Division and Fort Ord, Fort Ord, CA, dated 15 July 1982 showing he was discharged on 28 July 1982.

d. A photo of the applicant in his Army uniform.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 12 April 1977.

b. On 25 May 1979, the applicant accepted nonjudicial punishment under Article 15, Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty, to wit: Headquarters and Headquarters Company Muster Formation, on or about 0600, 24 May 1979. His punishment consisted of forfeiture of \$117.00 for one month and seven days of extra duty.

c. The applicant's duty status changed on the following dates:

- Present for Duty (PDY) to Absent Without Leave (AWOL) – 20 March 1982
- AWOL to Dropped from the Rolls (DFR) – 19 April 1982
- DFR to PDY – 21 April 1982

d. On 6 May 1982, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-4c, by reason of apathy (lack of appropriate interest), defective attitudes, or inability to expend effort constructively, and advised the applicant of his rights.

e. A report of medical examination and a report of medical history were completed on 6 May 1982. It was determined that the applicant was cleared for separation.

f. A Report of Mental Status Evaluation, dated 6 May 1982, shows the evaluating official noted the applicant had the mental capacity to understand and participate in the proceedings, and was mentally responsible.

g. On 10 May 1981 [sic], the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 13-4c, and its effects; of the rights available to him. He understood the following:

1) He acknowledged that he was provided the opportunity to consult with legal counsel.

2) He elected not to submit statements in his own behalf.

3) He requested consulting counsel.

4) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

5) He further understood that, as the result of issuance of a discharge under other than honorable conditions he may be ineligible for many or all benefits as a veteran under both Federal and State laws.

6) He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, the act of consideration by either Board did not imply that his discharge would be upgraded.

7) He understood he may, up until the date the discharge authority orders, directs, or approves the separation to withdraw the waiver of his rights and request that a board of officers hear his case.

8) He further understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge.

h. On 14 June 1982, his immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 13-4c, apathy (lack of appropriate interest), defective attitudes, or inability to expend effort constructively. The commander requested the requirement for rehabilitation be waived because the applicant demonstrated an inability to adjust to Army life and did not desire to remain on active duty.

i. On 17 June 1982, the intermediate commander recommended approval and noted the discharge was appropriate in view of the applicant's apathy and poor attitude toward the Army. Rehabilitation of the applicant would be futile.

j. On 18 June 1982, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge.

k. The applicant was discharged on 28 July 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 13-4c, in the rank/grade of specialist 5/E-5, and his service was characterized as under honorable conditions. He completed 5 years, 2 months, and 15 days of net active service during the period covered. He had lost time from 20 March 1982 to 20 April 1982.

5. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that Board's 15-year statute of limitations.

6. 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.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his general, under honorable conditions discharge. He contends he had a mental health condition that mitigated his misconduct.

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 in the Regular Army on 12 April 1977; 2) On 25 May 1979, the applicant accepted nonjudicial punishment for failing to go at the time prescribed to his appointed place of duty; 3) The applicant was found AWOL from 20 March-21 April 1982; 5) The applicant was discharged on 28 July 1982, Chapter 13-4c. His service was characterized as under honorable conditions.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service and medical records. The VA's Joint Legacy

Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted other mental health conditions as a contributing and mitigating factor in the circumstances that resulted in his separation. There was no indication the applicant reported mental health symptoms while on active service. A Report of Mental Status Evaluation, dated 6 May 1982, shows the evaluating official noted the applicant had the mental capacity to understand and participate in the proceedings, and was mentally responsible. A review of JLV was void of any behavioral health documentation, and the applicant receives no service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing a mental health condition that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did go AWOL, which can be a sequelae to some mental health conditions, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 the medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant

had condition or experience that mitigated his misconduct. The opine noted beyond the applicant's self-report there was insufficient evidence he was experiencing a mental health condition while on active service.

2. The Board determined the applicant's record is absent evidence of in-service mitigation to overcome the misconduct. The applicant was discharged for unsuitability-apathy, defective attitudes or inability to expend effort constructively and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial upgrade.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| ■ | ■ | ■ | GRANT PARTIAL RELIEF |
| : | : | : | 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 amending the DD Form 214 for the period ending 28 July 1982. by adding the following entries in item 18 (Remarks) CONTINUOUS HONORABLE SERVICE FROM 770412 UNTIL 791128.

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 upgrade of the applicant’s general, under honorable conditions discharge to honorable.

3/1/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Paragraph 13-4c stated, Commander exercising special court-martial jurisdiction are authorized to convene boards of officers for unsuitability and to order separation. Commanders will ensure that before taking separation action against an individual under the provisions of this

chapter, adequate counseling and rehabilitation measures have been taken. An individual is subject to separation under the provisions of this chapter for unsuitability when one or more of the following conditions exist:

1) Inaptitude – applicable to persons who are best described as inept, due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

2) Character and behavior disorders – as determined by medical authority, character and behavior disorders and disorders of intelligence as suggested by various symptoms as enuresis or somnambulism, when such disorders are chronic and recalcitrant to attempts at rehabilitation and interfere with the servicemember's ability to adequately perform his duties.

3) Apathy – lack of appropriate interest, defective attitudes, and inability to expend effort constructively.

4) Alcoholism – unsuitability by reason of chronic alcoholism may develop in persons who have previously rendered many years of adequate service. Personnel will be separated for unsuitability only if the major reason for separation is noneffective duty performance due to failure to cooperate with or succeed in an alcohol rehabilitation program.

5) Homosexuality – homosexual tendencies, desires, or interest but without overt homosexual acts.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. 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; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole

or in part to 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 that misconduct which led to the discharge.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5. 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.

6. 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.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//