

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230008973

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, and correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his narrative reason for separation as “hardship.”

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) with self-authored statement
- three statements of support, undated
- Service Records (56 pages), dated 24 January 1998 to 19 September 2000
- DD Form 214, for the period ending 19 September 2000

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. His wife walked away from their marriage, and his finances became next to nothing due to the amount of pay he was required to send to his wife. The remaining money was not enough to sustain himself and his son. He lost his house and had to send his son to live with family. He tried to pursue a “hardship discharge.” However, his sergeant did not do what he was supposed to do to get it started.

b. He went absent without leave (AWOL) because he was homeless, and his chain of command did nothing to help. His life has been extremely rough since his UOTHC discharge. He cannot get government jobs. He is forced to work jobs he does not like. The whole experience in and out of the military has caused him depression, anxiety, and post-traumatic stress disorder (PTSD). He did not expect to be treated like that in the military. He had no one to turn to or count on. He felt alone and still feels alone in

fighting the battle to get what was supposed to be rightfully his. He was never supposed to be in a situation to have to go AWOL.

3. The applicant enlisted in the Regular Army on 5 March 1998 for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 31R (Mechanical Transmission Systems Operator-Maintainer). The highest grade he attained was private/E-2.

4. Two DA Forms 4187 (Personnel Action) show the following changes in his duty status:

- Present for duty (PDY) to Absent without Leave (AWOL) – 4 June 1999
- AWOL to Dropped from Rolls – 6 July 1999

5. A DD Form 616 (Return of Absentee), dated 30 July 1999, shows the applicant surrendered to military authorities at Fort Meade, MD, on 20 July 1999.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 2 August 1999. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 4 June 1999 until on or about 20 July 1999.

7. The applicant consulted with legal counsel on 2 August 1999.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to provide a statement.

8. On that same date, his immediate commander recommended approval of the request for discharge in lieu of trial by court-martial with a service characterization of UOTHC.

9. The separation authority approved the request for discharge in lieu of trial by court-martial on 29 May 2000. He further directed reduction to the lowest enlisted grade and the issuance of an UOTHC Discharge Certificate.

10. The applicant was discharged on 19 September 2000, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 confirms his characterization of service was UOTHC, with separation code KFS and reentry code RE-4. He was credited with 2 years, 4 months, and 29 days of net active service, with lost time from 4 June 1999 to 19 July 1999.

11. The applicant provides the following:

a. Three undated statements of support, wherein the applicant's mother, son, and wife state, in effect, the applicant is a man of good moral character who is well respected by his friends. He knows the value of an honest day's work and recognizes his obligations to our country and its citizens. At the time he exited the military, he was going personal issues which affected him in many ways. He is an excellent father who is loving, compassionate, and provides guidance and support when it is needed most.

b. 56 pages of Service Records, dated 24 January 1998 to 19 September 2000, are outlined above, in pertinent part.

12. Discharges under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions character of service is normally considered appropriate.

13. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced mental health conditions including PTSD that mitigate 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 5 March 1998; 2) Court-martial charges were preferred against the applicant on 2 August 1999 for being AWOL from 4 June-20 July

1999; 3) The applicant was discharged on 19 September 2000, Chapter 10, in lieu of trial by court-martial. His characterization of service was UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided.

d. On his application, the applicant contends mental health conditions including PTSD were contributing and mitigating factors in the circumstances that resulted in his separation. There was no indication the applicant reported mental health symptoms while on active service. 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 mental health conditions including PTSD contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing mental health conditions including PTSD 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 including PTSD while on active service. The applicant did go AWOL, which can be a sequela to some mental health conditions including PTSD, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing mental health condition including PTSD that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 and the findings and recommendations of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | 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

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, USC, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214.

a. The regulation states that Soldiers voluntarily separated under the provisions of Army Regulation 635-200, Chapter 10, will be assigned separation code "KFS" and narrative reason "in lieu of trial by court-martial."

b. Soldiers voluntarily separated under the provisions of Army Regulation 635-200, Chapter 6, paragraph 6-3a or b, will be assigned separation code "KDB" and narrative reason "hardship."

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Chapter 6 provides for separation because of dependency or hardship. It states, in pertinent part, Soldiers may be discharged or released because of genuine dependency or hardship. Hardship exists when in circumstances not involving the death or disability of a Soldier's immediate family member, and separation from service will materially affect the care or support of the family by alleviating undue and genuine

hardship. A married Soldier who becomes a parent and Soldiers who become sole parents, whose children are under the age of 18 years old, may apply for separation under hardship. Supporting evidence is required. Soldiers will not be separated for dependency or hardship if they are under charges, in confinement, being processed for involuntary separation, being investigated under the military personnel security program, or being processed for physical disability. If the Soldier is beyond entry-level status, service will be characterized as honorable or under honorable conditions (general), as appropriate.

c. 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.

d. 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.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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//