

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230009559

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge to honorable
- Charge the narrative reason for separation from "In Lieu of Court-Martial" to "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Legal Brief
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Special Court-Martial Number 19, 17 November 1972
- Consent, Declaration of Parent or Legal Guardian
- Post Discharge Medical Documents

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 is requesting his discharge status be upgraded from "Under Other Than Honorable Conditions" to "Honorable" and his narrative reason for separation be changed to "Secretarial Authority." As a result of his time in the Army, he was diagnosed with several mental health disorders. He did not receive care for his disorders while in service and as a result he turned to self-medication, eventually leaving base without authorization. He would have received care for his mental health disorders while in service, I would not have turned to self-medication and would likely not have been discharged under other than honorable conditions discharge. As such, it is an injustice that my service should be deemed "Other Than Honorable".

3. The applicant's counsel provides a summary of the applicant's entry into and service in the Army and makes the following argument:

a. The Army failed to acknowledge that the applicant's behavior was symptomatic of an undiagnosed mental health condition as a result of his service and in light of his faithful and dutiful service prior to his misconduct, an Other than Honorable discharge acts as an injustice. While the misconduct the applicant was convicted of was of a serious nature, it was entirely connected to and explained by his trauma. He has suffered for years from the mental health conditions he developed as a result of his service. He has spent a lifetime in and out of mental health facilities, receiving multiple serious mental health diagnoses.

b. After his discharge, the applicant returned home, completely adrift. He moved in with wife at the time and their child and tried to find steady employment to support his family. Unfortunately, his mental health conditions continued to deteriorate leading to a divorce and his inability to maintain a job. He has sought treatment for his myriad of mental health conditions over the years, including multiple in-patient psychiatric stays. He has been diagnosed with Depression, Anxiety Disorder, Bi-Polar Disorder and has often experienced suicidal ideations with several attempts to take his own life.

c. The discharge should be upgraded on the basis of justice, in light of his mental health conditions which serve as mitigating factors for his misconduct. After experiencing a severely traumatic event, the applicant resorted to self-medicating through alcohol and made the difficult decision to leave base without Authorization. Under the new directives, this Board should view his mental health condition, along with the totality of the circumstances surrounding his discharge, as mitigating factors and upgrade his discharge status to Honorable, change his narrative reason to Secretarial Authority and amend the separation code.

4. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 6 December 1971. He was assigned to Fort Dix, NJ for completion of basic combat training.

b. On 7 February 1972, at Fort Dix, he received nonjudicial punishment under the provisions of Article 15 for without authority absenting himself from his appointed place of duty.

c. He was reassigned to Fort Knox, KY for completion of training in military occupational specialty (MOS) 45K, Tank Turret Repairer. He did not complete MOS training. He was reported absent without leave (AWOL) from 28 February to 5 March 1972.

d. On 10 Marc 1972, at Fort Knox, he received nonjudicial punishment under the provisions of Article 15 for being AWOL from 28 February to 5 March 1972.

e. On 15 May 1972, he was again reported AWOL from his MOS training unit. He was apprehended by civil authorities and returned to military control on 19 June 1972. He was placed in confinement.

f. On 13 July 1972, at Fort Devens, MA, he was convicted by a summary court-martial of one specification of AWOL from 15 May 1972 to 19 June 1972. The court sentence him to forfeiture of pay. The convening authority approved the sentence.

g. On 25 August 1972, he was again reported AWOL and on 22 September 1972, he was dropped from the rolls as a deserter. He was again apprehended by civil authorities on 22 September 1972.

h. On 27 October 1972, he was convicted by a special court-martial of one specification of AWOL from 25 August 1972 to 22 September 1972. The court sentence him to extra duty for 10 days. The convening authority approved the sentence.

i. The applicant was again reported AWOL from 13 November 1972 to 11 February 1973. He was confined from 12 February to 2 March 1973.

j. The complete facts and circumstances of the applicant's discharge processing are not available for review. However, his record contains a DD Form 214 that shows he was discharged on 8 March 1973 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of a court-martial with an under other than honorable conditions characterization of service (Separation Cod 246, Reenlistment Code 4). He was issued an Undesirable Discharge Certificate. This form also shows he completed 1 year, 7 months, and 8 days of net active service and he had 204 days of lost time.

5. There is no indication he petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 636-200) Chapter 10 is a voluntary discharge request in-lieu of trial by court martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. An under other than honorable conditions is authorized and normally considered appropriate.

7. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published Department of Defense guidance on equity, injustice, or clemency.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable and a change in the narrative reason for separation from "In Lieu of Court-Martial" to "Secretarial Authority".

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 Regular Army on 6 December 1971.
- Applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 7 February 1972, for without authority absenting himself from his appointed place of duty.
- On 10 March 1972, at Fort Knox, he received nonjudicial punishment under the provisions of Article 15 for being AWOL from 28 February to 5 March 1972.
- On 15 May 1972, he was again reported AWOL from his MOS training unit. He was apprehended by civil authorities and returned to military control on 19 June 1972. He was placed in confinement.
- On 13 July 1972, at Fort Devens, MA, he was convicted by a summary court-martial of one specification of AWOL from 15 May 1972 to 19 June 1972. The court sentenced him to forfeiture of pay. The convening authority approved the sentence.
- On 25 August 1972, he was again reported AWOL and on 22 September 1972, he was dropped from the rolls as a deserter. He was again apprehended by civil authorities on 22 September 1972.
- On 27 October 1972, he was convicted by a special court-martial of one specification of AWOL from 25 August 1972 to 22 September 1972. The court sentence him to extra duty for 10 days. The convening authority approved the sentence.
- Applicant was again reported AWOL from 13 November 1972 to 11 February 1973. He was confined from 12 February to 2 March 1973.
- The complete facts and circumstances of the applicant's discharge processing are not available for review. However, his record contains a DD Form 214 that shows he was discharged on 8 March 1973 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, in lieu of a court-martial with an under other than honorable conditions characterization of service (Separation Code 246, Reenlistment Code 4). He was issued an Undesirable Discharge Certificate.

c. Review of Available Records Including Medical:
The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD

Form 214, his ABCMR Record of Proceedings (ROP), counsel's legal brief, medical documentation, 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 as a result of his time in the Army, he was diagnosed with several mental health disorders. He did not receive care for his disorders while in service and as a result he turned to self-medication, eventually leaving base without authorization. He would have received care for his mental health disorders while in service, I would not have turned to self-medication and would likely not have been discharged under other than honorable conditions discharge. As such, it is an injustice that my service should be deemed "Other Than Honorable". Applicant's counsel further states the Army failed to acknowledge the applicant's behavior was symptomatic of an undiagnosed mental health condition as a result of his service and, in light of his faithful and dutiful service prior to his misconduct, an Other than Honorable discharge acts as an injustice. While the misconduct the applicant was convicted of was of a serious nature, it was entirely connected to and explained by his trauma. He has suffered for years from the mental health conditions he developed as a result of his service. He has spent a lifetime in and out of mental health facilities, receiving multiple serious mental health diagnoses. He has sought treatment for his myriad of mental health conditions over the years, including multiple in-patient psychiatric stays. He has been diagnosed with Depression, Anxiety Disorder, Bi-Polar Disorder and has often experienced suicidal ideations with several attempts to take his own life. After experiencing a severely traumatic event, the applicant resorted to self-medicating through alcohol and made the difficult decision to leave base without authorization.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no medical documentation from his time of service evidencing a behavioral health condition, treatment, or diagnosis. Per the applicant's statement, the trauma he experienced while in-service was feeling paranoid and fearful after ingesting LSD with fellow soldiers. Although, this may have been a frightening experience, this would not qualify as a trauma.

f. The VA electronic medical record available for review indicates the applicant is not service connected and has not participated in any behavioral health treatment via the VA, likely due to the characterization of his service. The applicant submitted a post-military service psychiatric evaluation dated 15 May 2017. This was the only medical documentation provided by the applicant and it was not shared in its entirety, as a result the diagnosis is unavailable. However, the evaluation indicates an extensive history of substance abuse, with the applicant's case manager apparently serving as a collateral informant for the evaluation and indicating the applicant does not attend medical appointments. Per the case manager, she believed he was, "smoking spice and marijuana when he can get it. She indicates he lives in an apartment which he often

opens up to friends who borrow money, and to homeless individuals". The evaluation further indicated the applicant has a history of mental health treatment with multiple hospitalizations, and his case manager indicated his most recent diagnosis of anxiety and depression. During the evaluation, the applicant reported that in 1981 he was hit by a car resulting in double vision, leg fracture, and being in a coma for three days. He further shared a long history of alcohol use, beginning at age 9. The applicant also indicated being treated by a medical provider since 2001 via prescription medication for sleep (Seroquel). He had no psychiatric provide or therapist and the available documentation did not indicate the reason for his case manager.

g. 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 condition/diagnosis that mitigates 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. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. There is no evidence of any in-service behavioral health diagnosis.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of a mitigating BH condition while in military service. There is no evidence of an in-service BH diagnoses, and there is no medical documentation indicating the VA has service-connected the applicant for any BH condition. And while the applicant self-asserted other mental health condition as related to his request, the applicant only provided medical documentation of an emergency room visit in May of 2017, over 40 years post-military service, that indicates the possible mental health conditions of anxiety and depression related to the applicant's longstanding and extensive history of substance abuse. However, since the document was not provided in its entirety the diagnosis is unavailable for review.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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.

a. Discharge upgrade: Deny. The complete facts and circumstances of the applicant's discharge processing are not available for review. However, his record

contains a DD Form 214 that shows he was discharged on 8 March 1973 under the provisions of AR 635-200, chapter 10 (Separation Code 246), in lieu of a court-martial with an under other than honorable conditions characterization of service. He completed 1 year, 7 months, and 8 days of net active service and he had 204 days of lost time. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination.

b. Reason for Separation. Deny. The issuance of a discharge under the provisions of chapter 10, AR 635-200, would have required the applicant to voluntarily, willingly, and in writing request discharge from the Army in lieu of trial by court-martial. The Board presumed that all requirements of law and regulation were met. Further, the Board presumed that the applicant's narrative reason for separation accurately reflects the reason for his discharge.

c. Based on a preponderance of available evidence, the Board determined that the character of service and reason for separation the applicant received upon separation were not in error or unjust.

BOARD VOTE:

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| : | : | : | 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.

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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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

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 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; 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.

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. 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, 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. 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.
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//NOTHING FOLLOWS//