

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230009817

APPLICANT REQUESTS: the characterization of his service be upgraded from under other than honorable conditions (UOTHC) to honorable and a personal appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149, Application for Correction of Military Record, 20 May 2023
- DD Form 149, 24 August 2023
- VA Form 21-4138, Department of Veterans Affairs (VA)-Statement in Support of Claim
- VA Form 21-526EZ, VA-Application for Disability Compensation and Related Compensation Benefits

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code, section 1552(b); however, the 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 indicates his request is related to post-traumatic stress (PTSD) and other mental health. He states, in effect, he needs the characterization of his service upgraded to receive VA benefits and get medical insurance.

3. His military records show:

- he enlisted in the Regular Army on 14 August 1973 for a period of three years
- he was awarded military occupational specialty 36K, field wireman
- the highest grade he held was private/E-2
- no awards for valor

4. The applicant's DA Form 20 shows he had numerous periods of lost time after he completed his Advance Individual Training during the following periods:

- 26 December 1973 to 27 December 1973, absent without leave (AWOL)
- 31 December 1973 to 3 January 1974, AWOL
- 7 October 1974 to 27 January 1974, AWOL
- 4 March 1974 to 4 March 1974, AWOL
- 18 March 1974 to 15 August 1974, AWOL to Desertion

5. Court-martial charges were preferred against the applicant on 19 August 1974, for violations of the Uniform Code of Military Justice. His DD Form 458, Charge Sheet, shows he was charged with being AWOL from on or about 18 March 1974 to on or about 13 August 1974.

6. His commander provided an evaluation of the applicant's performance on 20 August 1974. He stated, in part, the applicant had received two Article 15's for being AWOL. The applicant had shown by both his attitude and conduct that he was a substandard Soldier. He had a clear disregard for his military duties and mission. His failure to return on his own volition reinforced this view. He felt that the seriousness of the charge warranted a special court-martial and coupled with his substandard performance and attitude indicate a bad conduct discharge should be administered.

7. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200, Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. He further acknowledged he understood that 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

a. He elected to submit statements in his own behalf.

b. In his statement the applicant indicated, in effect, that he went AWOL because he had to help his sick mother support his two little sisters and his uncle had been trying to molest his sisters. Further, his wife had been kicked out of their apartment and he needed to get a job in order to support her. He had a civilian job waiting on him and he felt he could make more money doing that job. Further, he was not able to adjust to military life.

8. The applicant's immediate commander and battalion commander recommended disapproval of the applicants request for discharge under the provision of AR 635-200, Chapter 10.

9. On 6 September 1974, the separation authority, approved the applicant's request and directed he be reduced to the lowest grade and receive an Undesirable Discharge Certificate.

10. The applicant was discharged on 30 September 1974. His DD Form 214, Report of Separation from Active Duty, confirms he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 7 months and 21 days of total active service with 179 days lost under Title 10, U.S. Code, section 972.

11. The applicant did not provide evidence of a mental health condition.

12. The applicant provides his request for VA benefits, 24 July 2023. He indicated that he served honorably to the extent possible, but he had to leave the military early because his wife delivered their child at four months and the child died. He requested VA medical benefits and compensation.

13. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from under other than honorable conditions (UOTHC) 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 on 14 August 1973.
- Applicant's DA Form 20 shows he had numerous periods of lost time after he completed his Advance Individual Training during the following periods:
  - 26 December 1973 to 27 December 1973, absent without leave (AWOL)
  - 31 December 1973 to 3 January 1974, AWOL
  - 7 October 1974 to 27 January 1974, AWOL
  - 4 March 1974 to 4 March 1974, AWOL
  - 18 March 1974 to 15 August 1974, AWOL to Desertion
- Court-martial charges were preferred against the applicant on 19 August 1974, for violations of the Uniform Code of Military Justice. His DD Form 458, Charge Sheet, shows he was charged with being AWOL from on or about 18 March 1974 to on or about 13 August 1974.
- Applicant was discharged on 30 September 1974. His DD Form 214, Report of Separation from Active Duty, confirms he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC.

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, ABCMR Record of Proceedings (ROP), VA Application for Disability Compensation and Related Compensation Benefits, and documents from his service record and separation. 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.

The applicant states his request is related to post-traumatic stress (PTSD) and other mental health. He states he needs the characterization of his service upgraded to receive VA benefits and get medical insurance.

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit hardcopy medical documentation from his time in service. 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 and other mental health condition.

e. 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 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. The applicant asserts PTSD and OMH, however, he provides no documentation or a rationale for his contention of service-connected PTSD or OMH.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides no medical documentation substantiating any BH diagnosis. 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-asserts PTSD and OMH, he did not provide any medical documentation substantiating any diagnoses and did not provide a rationale for his contention. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
  
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

9/3/2024

X [REDACTED]

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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, United States 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 Army Board for Correction of Military Records (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, 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, an undesirable discharge was considered appropriate at the time. Requests are voluntary and included an admission of guilt to the charges against them or of lesser included offenses.

b. Provides 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.

c. Provides 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 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.

4. 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.

5. AR 15-185 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. The

applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//