

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230009841

APPLICANT REQUESTS:

- Upgrade his undesirable discharge under other than honorable conditions, based on having incurred post-traumatic stress disorder (PTSD)
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Commercial Driver's License
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DA Form 3054 (Elections of Amount, Beneficiary Designation and Settlement Options for Servicemen's Group Life Insurance (SGLI))

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 asking for this upgrade so he can access Department of Veterans Affairs (VA) benefits and receive treatment for his PTSD. He adds that he served our country and made a few mistakes along the way; he went absent without leave (AWOL) because he lost his son at birth, and his command refused to grant him leave. In support of his request, he provides a copy of his commercial driver's license, his DD Form 214, and his SGLI beneficiary form; he offers no additional documentary evidence pertaining to his PTSD.
3. A review of the applicant's service record reveals the following:
  - a. In or around February 1967, the applicant completed pre-entry testing, consisting of the Armed Forces Qualification Test (AFQT) and the Army Qualification Battery

(AQB). On the AFQT, the applicant achieved a score of 13, which placed him in AFQT Category IV; on his AQB, he earned a general technical (GT) score of 53 and higher than 80 in three other tested areas.

(1) (Following a 1948 Congressional mandate, the Department of Defense (DOD) developed a series of tests (AFQT and AQB) to determine a prospective enlistee/inductee's eligibility for service. In the 1960s, applicants and inductees had to achieve an AFQT score of at least 31, and inductees had to have a minimum GT score of 80 and at least a 90 on two other aptitude areas. The GT score was a composite of verbal and mathematics testing, and the Army considered it a measure of general ability).

(2) (In October 1966, because of a growing need for manpower due to the Vietnam War, the Secretary of Defense implemented the "New Standards Program – Project 100,000." The intent was to expand the pool of eligible enlistees/inductees by lowering the thresholds for acceptance. With this program, AFQT Category IV inductees (scores between 10 and 30) could now enter active duty. DOD ultimately terminated the program in 1971, but between 1966 and 1971, over 350,000 men entered military service via the New Standards Program).

b. On 14 February 1967, the Army of the United States (AUS) inducted the applicant for a 2-year term of active duty. Following basic combat training at Fort Knox, KY, orders transferred the applicant to Fort Eustis, VA for advanced individual training (AIT) in military occupational specialty 56E (Stevedore); he arrived in April 1967. Effective 23 June 1967, orders transferred him for further training at Fort Story, VA.

c. On 26 July 1967, the U.S. Army Transportation School issued orders reassigning the applicant to the U.S. Army Overseas Replacement Station at Fort Lewis, WA for overseas travel and further assignment to Vietnam. On 28 July 1967, the applicant's AIT unit reported him as AWOL and subsequently dropped him from unit rolls (DFR); (the applicant's service record does not show the DFR date).

d. On 28 September 1967, he returned to military control and was transferred to the U.S. Army Special Processing Detachment/U.S. Army Personnel Control Facility (PCF) at Fort Meade, MD. On 1 November 1967, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for having been AWOL, from 28 July to 28 September 1967 (62 days). On 30 October 1967, Headquarters, Fort Meade orders transferred the applicant to Fort Eustis, with an arrival date of 2 November 1967; orders subsequently assigned him to a transportation company.

e. On 14 December 1967, the applicant accepted NJP for having been AWOL, from 4 to 13 December 1967 (9 days). On 20 May 1968, the applicant accepted NJP for AWOL, from 4 to 8 May 1968 (4 days).

f. On 9 September 1968, the applicant accepted NJP for two specifications of failing to report to his appointed places of duty. Effective 24 September 1968, the applicant's unit promoted him to private first class (PFC)/E-3.

g. On 16 December 1968, and consistent with the applicant's plea, a special court-martial found the applicant guilty of AWOL, during the period 12 November to 4 December 1968 (22 days). The court's punishment consisted of 3-months' confinement; however, on 17 December 1968, the special court-martial convening authority suspended the confinement for 3 months.

h. On 24 December 1968, the applicant's unit reported him as AWOL and dropped him from unit rolls, on 23 January 1969. On 18 February 1969, the applicant's commander prepared a "Letter of Evidence," in which he described the circumstances surrounding the applicant's absence. He wrote, "[Applicant] received a special court-martial, on 9 December 1968, for a previous AWOL charge and received a suspended sentence. At 0545 hours, on 23 December 1968, [applicant] failed to make the reveille formation. Efforts were made to contact and find the whereabouts of [applicant], but they were to no avail...[applicant] has not contacted this unit or given any indication that he intends to return."

i. On 3 October 1969, the Fort Knox military police (MP) issued a DA Form 19-32 (MP Report), stating that, on 29 September 1969, local police had arrested the applicant and confined him in a county jail. On 30 September 1969, the applicant returned to military control, and, on or about 7 October 1969, military authority transferred him to the PCF at Fort Meade.

j. Court-martial charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 24 December 1968 to 29 September 1969 (279 days).

k. On 9 October 1969, after consulting with counsel, the applicant voluntarily requested discharge in-lieu of trial by court-martial under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he stated no one subjected him to coercion and counsel had advised him of the implications of his request. He elected not to submit statements in his own behalf.

l. On 4 November 1969, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable

conditions; additionally, the separation authority ordered the applicant's reduction to the lowest enlisted grade. On 3 November 1969, orders discharged the applicant accordingly.

m. His DD Form 214 shows he was discharged in accordance with chapter 10 of AR 635-200 with an under other than honorable conditions discharge (Separation Program Number 246, Reenlistment Code 3). He completed 1 year, 7 months, and 29 days of his 2-year AUS obligation, with 235 days of lost time. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) lists the National Defense Service Medal and a marksmanship qualification badge.

4. AR 15-185 (ABCMR) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

6. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

7. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable

conditions (UOTHC) to under honorable conditions. He contends he experienced undiagnosed PTSD that mitigates 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:

- The applicant was inducted into the Army on 14 February 1967.
- The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for having been AWOL on several occasions, and he eventually had court-martial charges preferred against him. He voluntarily requested discharge in lieu of trial by court-martial under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
- The applicant was discharged on 3 November 1969.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he had PTSD and needs VA Benefits. He did not provide any medical records. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed, and the applicant did not have a record.

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

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition that mitigates 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 relief was not 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 and available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine noted beyond self-report, that the applicant was experiencing a mental health condition while on active service. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple periods of AWOL. The Board noted the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 7 months, and 29 days of his 2-year AUS obligation, with 235 days of lost time. Based on the advising opine and the preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

5/6/2024

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. Title 10, United State Code, section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by 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. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and MCM, included a punitive discharge as a punishment.

(1) Until the issuance of an August 1969 change, Soldiers could submit their discharge requests at any time; after the change, they had to wait until court-martial charges had been preferred. Commanders additionally had to insure no one coerced the Soldiers into submitting a request for discharge and that the Soldiers had a reasonable amount of time to consult with counsel. If, after consulting with counsel, the Soldiers chose to submit a separation request, they had to do so in writing, and the Soldiers' counsel had to sign as a witness.

(2) Once the separation authority approved the Soldier's discharge request, an undesirable discharge was normally furnished, but the separation authority could direct either an honorable or a general discharge, if warranted.

4. The Manual for Courts-Martial then in effect stated the punishment for violations of Article 86 (AWOL for 30 or more days) included a punitive discharge.

5. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 7-30b (3) (Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) that Soldiers approved for administrative separation with an undesirable discharge under other than honorable conditions were to be reduced to private/E-1 prior to discharge.

6. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. Paragraph 37 (Item 15 (Reenlistment Code) directed DD Form 214 preparers to check the Soldier's DA Form 20 (Enlisted Qualification Record) for comments concerning his/her reenlistment eligibility. The paragraph additionally provided a list of reenlistment eligibility (RE) codes:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

7. AR 601-210 (Regular Army Enlistment Program), in effect at the time, prescribed policies and procedures for enlistments into the Regular Army. Table 2-5 (Waivable



Moral and Administrative Disqualifications) showed that former Soldiers separated per AR 635-200, chapter 10 could reenlist with a waiver.

8. AR 601-280 (Army Reenlistment Program), in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

a. Table 2-3 (Persons Ineligible for Immediate Reenlistment) stated individuals being discharged from current term of service for the good of the service under the provisions of chapter 10, AR 635-200 could not immediately reenlist.

b. Table 3-1 (Waiver Approval Authorities Basic Eligibility Criteria) stated the Chief of Personnel Operations could approve a waiver for Soldiers who had been AWOL for more than 30 days AWOL.

8. 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.

9. 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

10. 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, 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.

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.

11. AR 15-185 (ABCMR), states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//