

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230009863

APPLICANT REQUESTS: in effect, upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 lists post-traumatic stress disorder (PTSD) and other mental health as related to his request. He does not state exactly what he wants in his application
3. The applicant's service record shows:
  - a. DD Form 4 (Enlistment or Reenlistment Agreement-Armed Forces of the United States) reflects he enlisted in the Regular Army on 2 August 1972.
  - b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) show the applicant accepted nonjudicial punishment under Article 15 of the UCMJ on:
    - 13 August 1973 for without authority , failing to go at the time prescribed to his appointed place of duty on or about 6 August 1973 and on or about 7 August 1973 and on or about 8 August 1973; his punishment consisted of extra duty for 14 days and forfeiture of \$40.00 (suspended)
    - 7 February 1974 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 1 February 1974, and on or about 6 February 1974; his punishment consisted of reduction to private 2/E-2 (suspended), forfeiture of \$30.00 and extra duty for 14 days

- 22 March 1974 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 25 February 1974, on or about 27 February 1974 and on or about 13 March 1974; his punishment consisted of forfeiture of \$25.00 for one months and extra duty for 7 days; he did not appeal
- 7 June 1974 for sleeping upon his post on or about 31 May 1974; his punishment consisted of reduction to private 2/E-2 (suspended), forfeiture of \$100.00 per month for 2 months, forfeiture of \$100.00 per month for one month (suspended) and extra duty for 30 days; he did not appeal
- 23 October 1974 for without authority, absenting himself from his unit (AWOL) on or about 27 September 1974 until on or about 22 October 1974; his punishment consisted of reduction to private/E-1 (suspended), forfeiture of \$200.00 per month for 2 months (suspended), 30 days correctional custody facility (CCF); he did not appeal

c. In his statement, undated, he states, in effect, he went AWOL because he wanted to help his mother who was ill and she had been laid off. He sends her money to help out, but if \$200.00 was taken from him he would not be able to send her money and have money for himself.

d. DA Forms 4187 (Personnel Action) show the applicant was AWOL on 17 March 1975, present for duty on 19 March 1975, AWOL on 2 April 1975 and dropped from the rolls on 22 April 1975.

e. The Commander's Inquiry into the applicant's AWOL, 30 April 1975 shows there were no known statements concerning any difficulties which may have involved him such as domestic strife, indebtedness, or trouble with superiors.

f. DA Form 4187 shows the applicant was confined by military authorities on 16 September 1975. He was returned to pretrial confinement on 23 September 1975.

g. The applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, for the good of the service, in lieu of trial by court-martial on 1 October 1975. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a

under other than honorable conditions discharge and furnished an Undesirable Discharge Certificate.

(2) His election regarding the submission of statements in his own behalf is not available. In a form to the Commanding General, 1 October 1975 the applicant indicated that he disliked the Army and would accept the undesirable discharge.

h. Court-martial charges were preferred against the applicant on 2 October 1975. His DD Form 458 (Charge Sheet) shows he was charged with:

- AWOL from on or about 17 March 1975 until on or about 19 March 1975
- AWOL from on or about 2 April 1975 until on or about 16 September 1975

i. The applicant's his immediate commander recommended approval of the applicant's voluntary request for discharge with the issuance of a under other than honorable conditions discharge on 7 October 1975. His reason for the recommendation is the applicant was allegedly AWOL from on or about 17 March 1975 to on or about 19 March 1975 and from on or about 2 April 1975 to on or about 16 September 1975. The chain of command recommended approval.

j. The separation authority approved the discharge action on 20 October 1975 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant reduced to the lowest enlisted pay grade and be issued an undesirable discharge.

k. The Assistant Adjutant General memorandum, 21 October 1975, shows the general court martial convening authority approved the applicant's request for discharge and the charges are dismissed effective upon his discharge from the military.

l. The applicant was discharged on 3 November 1975. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-conduct triable by court martial with separation program designator KFS and reenlistment code 3 and 3B. His service was characterized as under other than honorable conditions. He completed 2 years, 7 months, and days of net active service. He had 148 days lost. He was awarded or authorized the National Defense Service Medal.

m. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. By regulation AR 635-200, Chapter 10 such discharges are voluntary requests for discharge in lieu of trial by court-martial.

4. On 16 August 1977 and 11 June 1980, the Army Discharge Review Board determined the applicant was properly discharged and denied the applicant's request for a change in the type and nature of his discharge.

5. On 29 September 2023, a staff member at ARBA, requested the applicant to provide medical documents that support his other mental health issue and PTSD. No response was provided.

6. In reaching its determination, the Board can consider the applicant's petition, and service record in accordance with the published equity, injustice, or clemency guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions including PTSD that mitigate his misconduct. 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 2 August 1972; 2) The applicant accepted nonjudicial punishments between 13 August 1973-23 October 1974 for failing to go at the time prescribed to his place of duty on various occasions, sleeping upon his post, and going AWOL; 3) On 02 October 1975, court-martial charges were preferred against the applicant for being AWOL from 17-19 March 1975 and 02 April-16 September 1975; 4) On 3 November 1975, the applicant was discharged, Chapter 10, for the good of the service-conduct triable by court martial. His service was characterized as under other than honorable conditions.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant reported or was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability. No additional medical documentation was provided for review.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did repeatedly not show up to work and go AWOL, which could be avoidant behavior and a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone 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 request, available military record and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted the applicant's presence of misconduct does not meet the presence of a mental health condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and failure to repair. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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. Title 10, U.S. Code, section 1556 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.

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

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from

Active Duty). The separation code KFS (is to be used for RA Soldiers discharged for the good of the service-conduct triable by court martial).

6. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the separation code KFS has a corresponding RE Code of "3 and 3B."

7. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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.

11. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

12. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual

differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

13. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

//NOTHING FOLLOWS//