

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230010386

APPLICANT REQUESTS: reconsideration of his previous request to upgrade 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. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100007353 on 17 August 2010.
2. The applicant provides a new argument which was not previously considered by the Board. According to the applicant, he was under extreme stress causing him to go absent without leave (AWOL). His family's home was destroyed due to an earthquake in 1989 and as the only son in the family, he was needed at home during this difficult period. Subsequently, when everything was settled, the applicant turned himself in voluntarily. Additionally, the applicant emphasizes that his time in the U.S. Army Reserve (USAR) was honorable and he served honorably while on active duty. As a result, the applicant is requesting an upgrade of his characterization of service from "under other than honorable conditions" to either "honorable" or, at a minimum, "general, under honorable conditions." The applicant annotated other mental health as an issue/condition related to his request.
3. A review of the applicant's service record shows:
 - a. Having had prior service in the USAR, he enlisted in the Regular Army on 12 November 1987.
 - b. A DA Form 4187 (Personnel Action) indicates the applicant was reduced in rank to private first class/E-3, effective 1 June 1989.

c. According to DA Forms 4187-E, on 15 November 1989, the applicant's duty status was modified from ordinary leave to AWOL. On 14 December 1989, the applicant was dropped from the rolls (DFR).

d. According to DA Forms 4187, the applicant returned to military control on 6 July 1990. On 9 July 1990, his status was modified from returned to military control to present for duty.

e. On 13 July 1990, a DD Form 458 (Charge Sheet) indicated that court-martial charges were preferred on the applicant for one specification of absenting himself with the intent to remain therefrom permanently, on or about 14 November 1989, and did remain so absent in desertion until 6 July 1990.

f. On 13 July 1990, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

g. Under the provisions of AR 635-200, Chapter 10, the immediate commander initiated separation proceedings against the applicant. The recommendation was for an under other than honorable conditions discharge. The intermediate commander recommended approval.

h. On 30 October 1990, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He was reduced to the rank of private/E-1 and issued an Under Other Than Honorable Discharge Certificate.

i. The DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged from active duty on 8 November 1990 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service – In Lieu of Court Martial" with

RE code 3. He completed 2 years, 4 months, and 8 days of active service. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Marksmanship Badge with Rifle Component Bar
- Army Achievement Medal
- Item 29 (Dates of Time Lost During This Period): 891114 – 900705

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. On 17 August 2010, the ABCMR rendered a decision on the applicant's request to upgrade his under other than honorable conditions discharge to an honorable discharge. The Board found no indication that the applicant made any appropriate effort to resolve his situation through his chain of command or other Army channels available to assist in hardship situations prior to going AWOL. Additionally, the evidence presented did not demonstrate the existence of a probable error or injustice. Consequently, the Board determined that the overall merits of this case were insufficient as a basis for correction of the records of the individual concerned.

6. By regulation (AR 635-200), a member who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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

8. 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 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: 1) After prior service in the USAR, he enlisted in the Regular Army on 12 November 1987; 2) On 13 July 1990, court-martial charges were preferred on the applicant for one specification of absenting himself with the intent to remain therefrom permanently on 14 November 1989 and did remain so absent in desertion until 6 July 1990; 3) The applicant was discharged on 8 November 1990, Chapter 10 "For the Good of the Service – In Lieu of

Court Martial.” His characterization of service was determined UOTHC; 4) On 17 August 2010, the ABCMR reviewed and denied the applicant’s request for an upgrade of his discharge.

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

d. On his application, the applicant noted mental health conditions were related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. He also reported experiencing stress due to his family experiencing extreme loss due to an earthquake in California, and he left to assist his family at that time. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

e. A review of JLV provided evidence the applicant has been engaged at the VA since 2023. He has been awarded service-connected disability for tinnitus, but not a mental health condition. The applicant has been afforded treatment in primary care due to his exposure to Agent Orange. During his primary care appointments, he reported a long history of Depression and Anxiety, which was related to his experiences when his family was involved with a significant California earthquake. He described many of his family members losing their homes and belonging to the earthquake and subsequent fires. In addition, they lost their jobs and financial stability. He described going AWOL to assist them, and he returned once they were more stabilized. The applicant has been experiencing depression and anxiety since this event, and he was diagnosed and treated for Depression and Anxiety by the VA.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient 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 a mental health condition that contributed to his misconduct. In 2023, the applicant reported to the VA experiencing depressive and anxiety symptoms at the time of his active service related to his family experiencing a natural disaster. The VA diagnosed him with Depression and Anxiety as a result of his continued report of symptoms which originated during his active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing a mental health condition that contributed to his

misconduct. In 2023, the applicant reported to the VA experiencing depressive and anxiety symptoms at the time of his active service related to his family experiencing a natural disaster. The VA diagnosed him with Depression and Anxiety as a result of his continued report of symptoms which originated during his active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing significant stress and likely a mental health condition related to his family's trauma while on active service. He did consistently report experiencing significant family stressors, and he went AWOL to address them. The applicant's AWOL behavior is also an avoidant behavior that can be a sequelae to some mental health conditions. Later in 2023, the applicant continued to report depressive, anxiety, and trauma symptoms related to his experiences at the time of his active service. He has been diagnosed with Depression and Anxiety by the VA. Therefore, per Liberal Consideration, there is sufficient evidence for the board's consideration to upgrade the applicant's discharge.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. 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 medical reviewing official. The Board concurred with the medical reviewer's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. The Board determined that in view of his AWOL (234 fays), his service did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20100007353 on 17 August 2010. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 ending on 8 November 1990 to show:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states that a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM; 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the Service.

3. 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.

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 based on 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.

//NOTHING FOLLOWS//