

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010426

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under honorable conditions (general) character of service. Additionally, he requests an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- Award, Boy Scouts of America, dated illegible
- Bachelor of Arts in Management, Saint Mary's College of California, date illegible
- Certificate of Recognition, California State Assembly, 1998
- Certificate of Graduation, U.S. Customs Service Academy, date illegible
- Retirement Services Reference Card, U.S. Office of Personnel Management, undated
- Health Summary, undated
- Department of Veterans Affairs (VA) Rating Decision, dated 22 April 2019
- letter, VA, dated 24 April 2019
- Medical document, Pacific Cancer Care, dated 12 June 2023

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 AR20190009033 on 23 September 2021.

2. The applicant states, in effect:

a. In February 1973, one week after the applicant turned 19 years of age, his father died in his arms. He was given one week of emergency leave before returning to his military police unit. He did not realize the effect this would have on him later. His company was given an assignment to guard access to American prisoners of war who were being returned from North Vietnam. It was very traumatic for him. Additionally, he received a lot of animosity from his first sergeant (1SG). Following a confrontation

where the 1SG called him a liar and he stood up to him, the 1SG never spoke to him again. The applicant did not tolerate bullying from anyone.

b. He injured his left shoulder during a field exercise. He received medical treatment and was placed on "quarters" for three days. He was picked up by his grandfather and taken to his mother's residence to convalescence. Upon return to his unit, he was given an Article 15 for being absent without leave (AWOL) for three days. He tried to explain to his commander that narcotic pain killers clouded his judgment, but his appeal was denied.

c. He became very bitter. He reported rampant drug use (marijuana) by members of his company to the Criminal Investigation Division. He believes someone told the commander he was acting as an informant. After receiving several death threat notes, he left post, never to return.

d. Following his discharge, he worked for the Post Office and obtained his associate degree. He started a security systems company, which he sold in 1989. He accepted a position with the U.S. Customs Service. He retired in 2005, with a total of 35 years of service.

e. He is requesting an upgrade because he has been diagnosed with a gastrointestinal stromal tumor. If the current medication does not work, he has decided to utilize the California Death with Dignity Act. His adult children have no idea about his military status. He does not want them to know he suffered an emotional response to his father's death. The Army did not have the support programs that it does today. His intentions while serving were good. Post-traumatic stress disorder (PTSD) was not recognized in 1973. He has since been diagnosed with PTSD and has been under a physician's care since 1981.

3. The applicant enlisted in the Regular Army on 26 June 1972 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 95B (Military Policeman). The highest rank he attained was private/E-2.

4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 5 June 1983, for failure to go at the time prescribed to his appointed place of duty on or about 22 May 1973, and for remaining absent until on or about 24 May 1973. His punishment consisted of reduction to private/E-1, forfeiture of \$50.00 pay, and 14 days restriction.

b. On 24 July 1973, for being AWOL, from on or about 3 July 1973 until on or about 18 July 1973. His punishment consisted of reduction to private/E-1, forfeiture of \$85.57 pay, 14 days of extra duty, and 14 days of restriction.

5. In a statement of psychiatric evaluation, dated 18 September 1973, the examining Social Work Officer stated, in pertinent part:

a. [The applicant] had a history of marked social inadaptability. His condition was part of a character and behavior disorder due to deficiencies in emotional and personality development. He used poor judgment, was not committed to productive goals, and was unmotivated.

b. His military history reflected involvement as an “undercover drug investigator,” and his description related to these activities seemed to be of a marked grandiosity. His father died in 1973. [The applicant] has since tried to be stationed closer to his mother to provide her help. He went AWOL twice to be with his girlfriend. He seemed to be dealing with many ‘stress situations’ in his life, with marginal or no success, and was basically very manipulative and ego involved.

c. The Social Work Officer further opined that [the applicant] was not amenable to punishment, retraining, or other forms of rehabilitation. He was psychiatrically cleared for separation.

6. Before a summary court-martial on or about 4 October 1973, at Fort Ord, CA, the applicant was found guilty of being AWOL, from on or about 13 August 1973 until on or about 7 September 1973. He was sentenced to reduction to private/E-1, forfeiture of \$100.00 pay, and hard labor without confinement for 14 days. The sentence was approved on 9 October 1973.

7. The applicant’s immediate commander formally initiated separation action against the applicant on 19 October 1973, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, paragraph 13-5b (2), by reason of unsuitability (character and behavior disorder). The commander requested a waiver of any further rehabilitative action and further stated [the applicant’s] behavior was not intentional but due to an incapacity within the meaning of unsuitability.

8. The applicant was notified by his commander on 25 October 1973 that he was being considered for elimination from service under the provisions of AR 635-200, paragraph 13-5b (2), by reason of unsuitability.

9. On that same date, the applicant acknowledged receipt of the notification. He was advised by counsel of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of waiving his rights. He acknowledged

understanding the result of the issuance of a character of service which was less than honorable and that he may expect to encounter substantial prejudice in civilian life if he received a character of service any less favorable than honorable. He elected not to submit a statement in his own behalf.

10. The intermediate commander recommended approval of the separation action and further stated that retention of [the applicant] would produce negative effects for the service due to his immaturity and inability to cope with his "stress situations." His latest incident was an alleged attempt to kill his mother, and he was apprehended by civil authorities.

11. The separation authority approved the recommended discharge on 1 November 1973, waived further rehabilitative requirements, and directed the issuance of a DD Form 257A (General Discharge Certificate).

12. The applicant was discharged on 21 November 1973, under the provisions of AR 635-200, paragraph 13-5b (2). His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as under honorable conditions (general), with separation code 264 and reenlistment code RE-3B. He was credited with 1 year, 3 months, and 18 days of net active service, with 38 days of lost time.

13. The ABCMR reviewed the applicant's request for an upgrade of his under honorable conditions (general) characterization of service on 23 September 2021. After careful consideration of the application, supporting documents, medical advisory opinion, and Department of Defense liberal consideration guidance, the Board determined there was insufficient evidence of an error or injustice warranting a change in his characterization of service. The applicant's request was denied.

14. As new evidence, the applicant provides:

a. A copy of his Bachelor of Arts in Management, three additional certificates, and his retirement services reference card, highlight several of his post-service accomplishments.

b. An undated health summary shows "current health issues," to include difficulty falling or staying asleep, mixed anxiety disorders, PTSD, high blood pressure and elevated transaminase measurement.

c. A VA Rating Decision dated 22 April 2019, and a corresponding letter, dated 24 April 2019, show the applicant has a service-connected disability rating of 20 percent (%) for left shoulder strain with traumatic arthritis and a combined rating of 30%.

d. A medical document from Pacific Cancer Care, dated 12 June 2023, shows the applicant was diagnosed with a gastrointestinal stromal tumor of the small intestine.

15. Army Regulation 635-200 provides for the separation of enlisted personnel. Chapter 13 of the version in effect at the time, provided for the separation of Soldiers found to be unfit or unsuitable for further military service. Paragraph 13-5b (2) applied to Soldiers being separated for character and behavior disorders (later deemed personality disorders).

16. The applicant was separated in 1973. In 1976, new guidance was published, in the form of the Brotzman and Nelson memoranda, that applied to Soldiers who were separated for unsuitability, by reason of personality disorders (known previously as character and behavioral disorders). These memoranda stipulated that applicants who were not diagnosed by a medical doctor trained in psychiatry shall be entitled to have their discharges upgraded to honorable, except in cases where there were "clear and demonstrable reasons" why an honorable discharge should not be given. Conviction by a general court-martial or by more than one special court-martial were considered to constitute "clear and demonstrable reasons" which would justify a less than honorable discharge.

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

18. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under honorable conditions (general) character of service.

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 26 June 1972.
- Applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on two occasions:
- 5 June 1983, for failure to go at the time prescribed to his appointed place of duty on or about 22 May 1973, and for remaining absent until on or about 24 May 1973.
- 24 July 1973, for being AWOL, from on or about 3 July 1973 until on or about 18 July 1973.
- A memo dated 19 October 1973 states, "his stay in PFC has been marked with incidents which would tend to bring discredit upon the service. The latest incident

was an alleged attempt to kill his mother and his apprehension by civil authorities.”

- Applicant was notified by his commander on 25 October 1973 that he was being considered for elimination from service under the provisions of AR 635-200, paragraph 13-5b (2), by reason of unsuitability.
- Applicant was discharged on 21 November 1973, under the provisions of AR 635-200, paragraph 13-5b (2). His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as under honorable conditions (general), with separation code 264 and reenlistment code RE-3B.
- The ABCMR reviewed the applicant’s request for an upgrade of his under honorable conditions (general) characterization of service on 23 September 2021. After careful consideration of the application, supporting documents, and medical advisory opinion, the applicant’s request was denied.

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), self-authored statement, undated health summary, VA rating decision dated 22 April 2019, 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 in February 1973, one week after the applicant turned 19 years of age, his father died in his arms. He was given one week of emergency leave before returning to his military police unit. He did not realize the effect this would have on him later. His company was given an assignment to guard access to American prisoners of war who were being returned from North Vietnam. It was very traumatic for him. Additionally, he received a lot of animosity from his first sergeant (1SG). Following a confrontation where the 1SG called him a liar and he stood up to him, the 1SG never spoke to him again. The applicant did not tolerate bullying from anyone. He injured his left shoulder during a field exercise. He received medical treatment and was placed on “quarters” for three days. He was picked up by his grandfather and taken to his mother’s residence to convalesce. Upon return to his unit, he was given an Article 15 for being absent without leave (AWOL) for three days. He tried to explain to his commander that narcotic pain killers clouded his judgment, but his appeal was denied. He became very bitter. He reported rampant drug use (marijuana) by members of his company to the Criminal Investigation Division. He believes someone told the commander he was acting as an informant. After receiving several death threat notes, he left post, never to return. Following his discharge, he worked for the Post Office and obtained his associate degree. He started a security systems company, which he sold in 1989. He accepted a position with the U.S. Customs Service. He retired in 2005, with a total of 35

years of service. He is requesting an upgrade because he has been diagnosed with a gastrointestinal stromal tumor. If the current medication does not work, he has decided to utilize the California Death with Dignity Act. His adult children have no idea about his military status. He does not want them to know he suffered an emotional response to his father's death. The Army did not have the support programs that it does today. His intentions while serving were good. Post-traumatic stress disorder (PTSD) was not recognized in 1973. He has since been diagnosed with PTSD and has been under a physician's care since 1981.

e. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant submitted hardcopy medical documentation from his time of service evidencing an evaluation, dated 18 September 1973, that psychiatrically cleared him for separation. The evaluation states the applicant "has a history of marked social inadaptability during his tour in the military. His condition is part of a character and behavior disorder due to deficiencies in emotional and personality development of such a degree as to seriously impair his function in the military service. He uses poor judgment, is not committed to productive goals and is unmotivated." The evaluation further described the applicant as "immature" and "basically very manipulative and very ego involved". The evaluation did not identify a behavioral health condition but described a manner of interacting with his environment that was self-serving and immature.

f. The VA electronic medical records available for review indicates the applicant is 30% service connected for medical issues but is not service connected for any behavioral health condition. The applicant has not been treated by the VA for a behavioral health condition and in a C and P examination, dated 02 July 2015, the evaluator opined the applicant's identified traumas did not meet criteria for PTSD and there was insufficient evidence to establish any of his symptoms were related to his service. In addition, the applicant did not submit any medical documentation post-military service substantiating his assertion of having been diagnosed with PTSD and under a physician's care since 1981. However, he submitted an undated page from his electronic civilian medical record that indicates the following behavioral health issues and effective dates, all of which are post-military service: difficulty falling or staying asleep, 9 October 2015; Other mixed Anxiety Disorder, 23 October 2017; and PTSD, 31 August 2018. The applicant did not provide any treatment notes regarding these conditions and, since the effective dates are all post-military service, they would not offer mitigation.

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 or diagnosis that mitigates his misconduct. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board

h. 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, PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant had a BH condition during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated by the VA for any BH condition. And while the applicant self-asserted PTSD, his medical documentation does not substantiate his contention that he was diagnosed with PTSD and has been under a physician's care since 1981. However, regardless of diagnosis, the applicant was discharged by reason of unsuitability due to repeated "incidents which would tend to bring discredit upon the service. The latest incident was an alleged attempt to kill his mother and his apprehension by civil authorities." A charge of attempted murder of a family member and apprehension by civil authorities is not part of the natural history or sequelae of PTSD, or any other behavioral health condition, as such, it would not be mitigated under Liberal 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, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition or diagnosis that mitigates his misconduct. The opine noted there no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated by the VA for any BH condition.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL and attempted murder. The Board applauds the applicant's post service achievements of earning his bachelor's degree and working with the U.S.

Customs Service for 35 years and retiring. However, the Board agreed the applicant was discharged for being unfit or unsuitable for further military service and was provided an under honorable conditions (general) characterization of service. The Board determined that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board found reversal of the previous Board decision is without merit and 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.

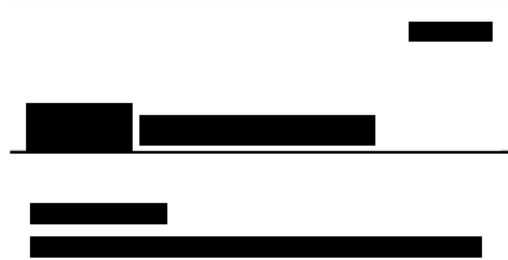
BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20190009033 on 23 September 2021.



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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 established policy and provided procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. It provided for the separation of individuals for unsuitability whose record evidenced apathy (lack of appropriate interest), defective attitudes, and an inability to expend effort constructively. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record. Paragraph 13-5b (2) provided for the separation of Soldiers for unsuitability due to character and behavior disorders (later deemed personality disorders).

4. AR 635-200 was revised on 1 December 1976 following the settlement of a civil suit. Thereafter, the type of discharge and the character of service imposed were to be determined solely based upon the individual's military record during the respective period of enlistment. Further, any separation for unsuitability, based on personality disorder, must have included a diagnosis of a personality disorder made by a physician trained in psychiatry.

a. The Brotzman Memorandum required retroactive application of revised policies, attitudes and changes in reviewing applications for upgrade of discharges based on personality disorders.

b. The Nelson Memorandum expanded the review policy and specified that the presence of a personality disorder diagnosis would justify upgrade of a discharge to fully honorable, except in cases where there were "clear and demonstrable reasons" why a fully honorable discharge should not be given.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give

liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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, 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.

//NOTHING FOLLOWS//