

IN THE CASE OF: ██████████

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230010561

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 293 (Application for the Review of Discharge)

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 he wants to reap the benefits of his honorable service to his country. The correction to his record is long overdue. He served in 1975 and unfortunately the country had not become what it is today. He was forced out by the bigotry of the command that was appointed over him. He has lived with this for over half a century and need his record corrected. He still honors the oath he took "to honor and protect against foreign and domestic." He is asking his country to honor their promise to him. He notes post-traumatic stress disorder (PTSD) as a related issue/concern to his request.
3. Through a separate personal statement the applicant states:
 - a. On or around September 1975, two soldiers he was associated with were involved in stealing a stereo. The criminal investigation division concluded since he knew them, he was involved also. He had nothing to do with the incident and he was in the mess hall. He was given two options: either face 5 years at Leavenworth or go home with an undesirable discharge. He was not offered a lawyer and did not know of his rights at the time, he was only 19 years old. After hours of interrogation and feeling pressured and being coerced, he chose to go home instead of jail.

b. Per the following M21 reference (M21-1MR, Part IV 136), his stressors are consistent with the circumstances, conditions and hardships of his military service. He was coerced under undue influence from military officials to depart from the opportunity to provide honorable and continued service to his country under false accusations inconsistent with his character and standing as an honorable member of the United States Armed Forces. Inasmuch as on the above said date. He was wrongfully accused of a crime he did not commit without just cause as well as opportunity to have his day in court. This instance has weighed heavily on his mental disposition inasmuch that he has suffered from PTSD, homelessness, alcoholism, depression, sleepless nights, headaches, and the inability to cope in society, which in turn, has created substantial stressors to his daily living as well as family activities.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 19 August 1974 at the age of 17 years with the consent of his parents.

b. The applicant accepted nonjudicial punishment on/for the following dates:

- 5 May 1975, for failing to go to his appointed place of duty
- 23 June 1975, for willfully disobeying a lawful order
- 25 July 1975, for absenting himself from his unit from 4 July 1975 to 12 July 1975; his punishment included reduction to private/E-1

c. On 9 September 1975, charges were preferred against the applicant for violation of the Uniform Code of Military Justice, Article 121 (Larceny and Wrongful Appropriation), one specification of acting jointly in pursuance of a common intent, did at Fort Hood Texas, on or about 16 August 1975, steal a Sharp stereo, of a value of about \$132.00, and two Pioneer speakers, of a value of about \$60.00, of a total value of about \$192.00, the property of Private [REDACTED]

d. On 15 September 1975, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood:

- he may request discharge for the good of the service because charges have been preferred against him under the Uniform Code of Military Justice (UCMJ), which authorize the imposition of a bad conduct or dishonorable discharge
- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- he was advised of the implications that are attached to it

- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- he had the opportunity to consult with appointed counsel for consultation
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, that he may be ineligible for many, or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he desired not to submit a statement

e. On 6 October 1975, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, Chapter 10. The applicant would be issued an Undesirable Discharge Certificate.

f. On 28 October 1975, the applicant was discharged accordingly with an under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows:

- he completed 1 year, 2 months, and 2 days of active service
- he had 8 days of lost time from 4 July 1975 to 11 July 1975

4. There is no indication the applicant applied to the Army Discharge Review Board within that board's 15-year statute of limitations.

5. By regulation (AR 635-200), a Soldier 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 in lieu of trial by court-martial.

6. 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.

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 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) The applicant enlisted into the Regular Army on 19 August 1974; 2) On 9 September 1975, charges were preferred against him for theft of another Soldier's property; 3) On 28 October 1975, the applicant was discharged for the good of the service, with an under other than honorable conditions characterization of service.

c. The Army Review Boards Agency (ARBA) Behavioral Health 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 documentation was provided for review.

d. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with and or treated for service-connected any mental health condition including PTSD by the VA. He also does not receive any service-connected disability.

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

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

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while on active service. Also, there is no nexus between his reported mental health conditions including PTSD and the applicant's misconduct of theft in that: 1) this type of misconduct is not a part of the natural history or sequelae of the applicant's reported mental health conditions including PTSD; 2) the applicant's mental health conditions including PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

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 PTSD claim and the review and conclusions of the ARBA Behavioral Health 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 PTSD. 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:

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.

8/18/2024

X [REDACTED]

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, 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the

good of the service. However, the separation authority may direct a General Discharge Certificate, if such is merited by the Soldier's overall record during the current enlistment.

3. 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 post-traumatic stress disorder (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.

4. 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, on 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

6. 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.

//NOTHING FOLLOWS//