

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011235

APPLICANT REQUESTS: his under other than honorable (UOTHC) discharge be upgraded to honorable. Additionally, he requests a personal appearance before the Board via video/telephone.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Service Medical Documents
- DD Form 214 (Report of Separation from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He asks for this correction because he dealt with injustice by a jealous staff sergeant (SSG)/E-6. The company commander Captain (CPT) T__ and the applicant were from the same hometown and the commander showed the applicant favoritism. The SSG did not like that and would often take it out on the applicant. He has been unfairly punished for 49 years.

b. The applicant went home for the weekend and his house burned. He called his First Sergeant W__ who spoke with CPT T__ and the applicant was told to take all the time that he needed to report to his first sergeant upon his return. Two weeks later a sheriff deputy came to his house and picked him up and turned him over to the military police at Fort Jackson, SC, who escorted him to Fort Bragg, NC. The applicant was given to the SSG he spoke of earlier. Upon his return he learned that a new commander was in charge and that CPT T__ had transferred.

c. The applicant stated the fire department was called to his house. When the story was checked the fire department said there was no record of a fire at the applicant's house. The applicant states they had called different fire departments. They had taken his story over the applicant's. He was found guilty of being absent without leave (AWOL) which led to his discharge.

d. The judge was white, the SSG was white, and the applicant is black. He feels that he wasn't given a fair chance to explain himself. The really didn't want to hear anything that he had to say. Before this event he had served honorably and in Vietnam, no problems, everything went well. He went to Fort Bragg and suddenly he was not fit for the military and was discharged UOTHC.

3. The applicant enlisted in the Regular Army on 8 May 1970 for 3 years. His military occupational specialty was 76V (Equipment Storage Specialist). He served in Vietnam from 16 October 1970 through 14 October 1971.

4. He was honorably discharged on 9 May 1972, for immediate reenlistment. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years and 2 days of net active service this period. His awards include the National Defense service Medal (NDSM), Republic of Vietnam Service Medal (VSM), Overseas Service Ribbon (2), and the Republic of Vietnam Campaign Medal (VCM) with 1960 device.

5. The applicant provides a Clinical Record; Narrative Summary, which shows a date of admission of 23 January 1972 and date of discharge of 31 January 1972 for onset of acute med back pain while putting the lid on a coffeepot while on kitchen patrol on 23 January 1972. He had severe pain. He was diagnosed with acute facet syndrome, lumbar spine, resolved.

6. The applicant reenlisted on 10 May 1972 for 5 years.

7. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 11 June 1973 for without authority, failing to go at the time prescribed to his appointed place of duty on or about 7 June 1983 and on or about 8 June 1973. His punishment consisted of forfeiture of \$81.00 per month for one month, reduction to private first class/E-3 and 7 days in correctional custody (suspended).

8. The applicant was counseled on 11 June 1973 for failure to repair (twice).

9. The applicant was absent without leave (AWOL) on 31 January 1973 and dropped from the rolls on 29 August 1973.

10. The applicant was apprehended by civil authorities on 11 October 1973. The apprehension was initiated by military authorities.

11. Court martial charges were preferred against the applicant on 15 October 1973. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 31 July 1973 through 12 October 1973.

12. The applicant consulted with legal counsel on 1 November 1973, 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 UOTHC discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. 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 Veterans Administration, 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 because of a dishonorable discharge.

b. He elected to submit statements in his own behalf. He states on 1 November 1973, he requests discharge from the Army. With problems at home, hate, displeased and discomfort toward the Army; due to being lied to and misled from his reenlistment noncommissioned officer during the time of his reenlistment. He reached the decision for the betterment of the Army and himself, that he be discharged. He cannot be proud of his time and duties henceforth. It would save the Army a lot of trouble, time, and money if he were discharged.

13. The applicant's commander recommended approval of his request for discharge on 30 November 1973 with issuance of an DD Form 258A (Undesirable Discharge Certificate). The recommendation was based on the history of counseling sessions which often proved to be futile and the applicant's past record of indebtedness. The chain of command recommended approval.

14. The applicant's commander requested a mental evaluation on 13 December 1973. The applicant underwent a psychiatric evaluation on 20 December 1973.

a. There was some question when he went through with medical processing that he was somewhat confused and had difficulty with proverbs to the examining doctor. The psychiatrist thinks his difficulty with proverbs was largely on a cultural basis. The applicant is from Mississippi and the psychiatrist feels there was probably a

communication gap between the applicant and the doctor who was doing the mental status examination at that time.

b. There was no looseness of association, he was oriented to person, place, and time; no hallucinations, no delusions; affect appropriate; mood level; no homicidal or suicidal ideations. He is also able to abstract well. No significant mental illness.

c. The applicant is fully understood right from wrong, is fully responsible for his actions, and is cleared to take part in any administrative actions or boards which may be contemplated.

15. The Staff Judge Advocate recommended approval of the applicant's request for discharge on 18 January 1974.

16. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed issuance of a DD Form 258A and the applicant's reduction to the lowest enlisted grade.

17. The applicant was discharged on 24 January 1974. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service with Separation Program Designator 246 and Reenlistment Code 3. His service was characterized as UOTHC. He completed 1 year, 6 months, and 2 days of net active service this period. He had lost time of 73 days. His awards include the NDSM and the VCM with 1960 device.

18. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

19. The applicant provides service medical documents that show back pain and a copy of his DD Form 214 as discussed above.

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

21. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART)

application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 24 January 1974 discharge characterized as under other than honorable conditions.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the Regular Army on 10 May 1972 and was discharged on 24 January 1974 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. It shows 73 days lost under 10 USC § 972.

d. The military medical records show the applicant was evaluated and treated for a variety of minor issues, including a rash, low back pain, muscle strain, cellulitis, ulcers, headaches, and positive tuberculosis skin test.

e. A Charge Sheet (DA Form 458) shows he was charged with absence without leave from 3 July 1973 thru 12 October 1973.

f. On 1 November 1973, the applicant requested discharge for the good of the service under chapter 10 of AR 635-200.

g. The applicant underwent a pre-separation medical examination on 20 November 1973 at which time the provider documented a normal examination, that the applicant was under treatment for ulcers, "seemed confused," and he was found qualified for separation.

h. The applicant underwent a psychiatric evaluation on 4 January 1974. The psychiatrist documented a normal examination and opined on the prior physician's note that the applicant "seemed confused:"

"There was some question when he went through with Medical Processing that he was somewhat confused and had difficulty with proverbs to the examining doctor. I think his difficulty with proverbs was largely on a cultural basis: The man is from Mississippi and I feel there was probably a communication gap between PFC [Applicant] and the doctor who was doing the mental status examination at that time."

i. He stated the applicant had "No significant mental illness" and "This individual fully understands right from wrong, is fully responsible for his actions, and is cleared to take part in any administrative actions or boards which may be contemplated."

j. No other medical documentation was submitted with the application. JLV does not have a record of the applicant.

k. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violation; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

l. It is the opinion of the ARBA medical advisor that a discharge upgrade is not warranted.

m. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 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 reviewing medical official's finding no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violation; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance

of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

[REDACTED]

[REDACTED]

[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, 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, USC, Section 1556, 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. Army Regulation 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 10 provided that a member who had 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 in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate. When a Soldier is to be discharged UOTHC, the separation authority will direct an immediate reduction to private E-1, in accordance with governing regulation.

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 Discharge Review Boards (DRB) and Service 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 post-traumatic stress disorder; 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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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.

//NOTHING FOLLOWS//