

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230011266

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character reference letters (3)
- Civilian professional certifications

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 AR20170016611 on 12 July 2019.
2. The applicant states upgrade should be granted because his discharge was based on one isolated incident in his 33 months of service with no other negative incidents. Furthermore, he was never evaluated for mental health issues; family matters and other stress factors were relevant in connection with his service. He apologizes to the Government, the Army, and his wife for his youthful actions.
3. On 16 September 1993, the applicant enlisted in the Regular Army, for 4 years. Upon completion of training, he was awarded military occupational specialty 19K (Armor Crewman).
4. On 22 April 1996, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 9 July 1996.
5. Court-martial charges were preferred against the applicant on 11 July 1996, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 22 April 1996 until on or about 9 July 1996.

6. On 11 July 1996, 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; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for discharge in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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.

b. He declined a separation medical examination. He declined to submit a statement in his own behalf.

7. On 19 August 1996, the applicant's commander recommended approval of the applicant's request for discharge. The commander noted the applicant had become disillusioned with the military. His retention was not in the best interest of the Army.

8. By legal review on 20 August 1996, the applicant's Chapter 10, separation action was found to be legally sufficient for further processing.

9. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 20 August 1996, in lieu of trial by court-martial, and directed his discharge under UOTHC discharge.

10. The applicant was discharged on 19 September 1996. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Code 3. He completed 2 years, 9 months, and 16 days of net active service this period with 78 days of lost time.

11. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 12 July 2019, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis for correction of his records.

12. The applicant provides the following (provided in entirety for the Board):

a. Three character reference letters that collectively attest to the applicant's service to others, mentorship, leadership, work ethic, and good character.

b. Civilian documents and certifications that highlights his post-service educational and professional accomplishments.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. The applicant contends that Other Mental Health Issues and Psychosocial Stressors were relevant though not evaluated when he was in the military.

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:

- The applicant previously petitioned the ABCMR for relief. On 12 July 2019 the Board voted to deny relief as it was determined the overall merits of the case were insufficient as a basis for correction of his records, Docket Number AR20170016611.
- The applicant enlisted in the Regular Army on 16 September 1993 for 4 years.
- The applicant was reported absent without leave (AWOL) on 22 April 1996 through 09 July 1996. On 11 July 1996, court martial charges were preferred against the applicant.
- After receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200, Chapter 10, for discharge in lieu of trial by court-martial. At the time, the applicant declined a separation medical examination and declined to submit a statement on his own behalf.
- The applicant was discharged on 19 September 1996 under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.

c. Review of Available Records Including Medical

All supporting documents reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration. The VA electronic medical record (JLV), ROP and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No BH-related military or civilian records were provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a service-connected (SC) disability.

d. The applicant requests reconsideration of a request to upgrade his UOTHC discharge. He contends Other Mental Health Issues and Psychosocial Stressors were relevant though not evaluated when he was in the military. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues or Psychosocial Stressors. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends Other Mental Health Issues and Psychosocial Stressors were relevant though not evaluated when he was in the military, and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

f. 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 contends his misconduct was related Other Mental Health Issues and Psychosocial Stressors.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or

mitigated by Other Mental Health Issues and insufficient evidence to support and upgrade based on BH medical mitigation.

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, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. The opine noted the applicant's records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for the Board to weigh a clemency determination. The Board found the applicant post service achievements and character letters attesting to his good character, mentorship, leadership and work ethic noteworthy. However, the Board determined 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 to an honorable 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 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 AR20170016611 on 12 July 2019.



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 the 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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//