

IN THE CASE OF: ██████████

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230011585

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general), and 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
- DD Form 214 (Certificate of Release of Discharge from Active Duty), for the period ending 22 March 1982

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, in effect:

a. After losing his job, he enlisted in the Army. His recruiter gave him alcohol every time he saw him. While stationed in Germany, the command was aware of his drinking issue, but it was left untreated. He was caught with hashish during an inspection and was sent to Narcotics Anonymous.

b. In 1981, he was transferred to Fort Benning, Georgia, where things got worse. He returned from the field to find his wife with another man. He became extremely intoxicated, was caught speeding, and was arrested. He spent three days in jail. The military let him down by not helping him.

c. He began acting out more. He fell in with others who were hard partiers and began doing hard drugs. He used marijuana, cocaine, crystal meth, and angel dust. Sitting in the barracks using and drinking one night, someone came into the room and told him some guys were coming to kill him. He was afraid for his life. He and a couple

buddies jumped in the car. He eventually ended up in [REDACTED] When he turned himself in, he was brought up on charges for being absent without leave (AWOL). He was told if he left quietly, his discharge would be automatically upgraded.

d. He believes the recruiter started him on the path to addiction before he was 18 years old. The issues with his wife compounded things. He was angry, depressed, and anxious with no support system to deal with the mental aspects of those events. He self-medicated with drugs and alcohol. This has been a source of shame for him. He is now drug free and sober. He is a marvelous citizen, who takes care of his mother and works every single day. He has held the same job for 24 years. A discharge upgrade would bring him peace of mind.

3. The applicant enlisted in the Army National Guard on or about 7 May 1978. He was ordered to active duty for the completion of initial entry training. A DD Form 214 (Report of Separation from Active Duty) shows he was released from active duty on 17 August 1978, with an honorable character of service. He was credited with 3 months and 11 days of net active service and awarded military occupational specialty 11C (Indirect Fire Crewman).

4. The applicant enlisted in the Regular Army on 15 November 1978 for a 4-year period. The highest rank he attained was specialist/E-4.

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

a. On 18 May 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 14 May 1981. His punishment consisted of 14 days of extra duty and 14 days of restriction.

b. On 27 May 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 25 May 1981. His punishment consisted of reduction to private first class/E-3, forfeiture of \$318.00 pay, 20 days of extra duty, and 20 days of restriction. His appeal of his punishment was denied.

6. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to AWOL on 2 September 1981
- AWOL to Dropped from Rolls (DFR) on 1 October 1981
- DFR to PDY, surrendered to military authorities, on 22 January 1982

7. A Personnel Control Facility interview sheet, dated 25 January 1982, shows the applicant stated he went AWOL because his wife left him.

8. Court-martial charges were preferred against the applicant on 26 January 1982 for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 2 September 1981 until on or about 22 January 1982.

9. The applicant consulted with legal counsel on 27 January 1982.

a. He 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.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. 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 acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

10. On 29 January 1982, the applicant's immediate commander recommended approval of the request for discharge for the good of the service, with a service characterization of UOTHC. The commander further stated the applicant was not motivated for continued service and would not respond to counseling or rehabilitation. The intermediate commander reviewed and concurred with the recommendation.

11. On 1 February 1982, the separation authority approved the request for discharge and further directed the issuance a DD Form 794A (UOTHC Discharge Certificate) and reduction to the lowest enlisted grade.

12. The applicant was discharged on 22 March 1982, under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial. His DD Form 214 confirms a UOTHC characterization of service. He was credited with 2 years, 11 months, and 18 days of net active service, with lost time from 2 September 1981 to 21 January 1982.

13. The Army Discharge Review Board reviewed the applicant's request for upgrade of his characterization of service on or about 13 September 1989. After careful

consideration, the Board determined the applicant was properly and equitably discharged.

14. In the processing of this case, the Army Review Boards Agency (ARBA) sent the applicant a letter, on 14 December 2023, requesting medical documentation to support his contention of other mental health. To date, no additional documentation has been received.

15. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to general, under honorable conditions. He contends other mental health (OMH) condition mitigates his discharge.

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 Army National Guard on or about 7 May 1978. He was ordered to active duty for the completion of initial entry training. A DD Form 214 (Report of Separation from Active Duty) shows he was released from active duty on 17 August 1978, with an honorable character of service.
- Applicant enlisted in the Regular Army on 15 November 1978.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on two occasions:
- On 18 May 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 14 May 1981.
- On 27 May 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 25 May 1981.
- Court-martial charges were preferred against the applicant on 26 January 1982 for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 2 September 1981 until on or about 22 January 1982.
- On 29 January 1982, the applicant's immediate commander recommended approval of the request for discharge for the good of the service, with a service characterization of UOTHC. The commander further stated the applicant was not

motivated for continued service and would not respond to counseling or rehabilitation. The intermediate commander reviewed and concurred with the recommendation.

- Applicant was discharged on 22 March 1982, under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial. His DD Form 214 confirms a UOTHC characterization of service, with separation code JFS and reenlistment code RE-3, 3B, 3C.

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, 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. In a self-authored statement, the applicant states, after losing his job, he enlisted in the Army. His recruiter gave him alcohol every time he saw him. While stationed in Germany, the command was aware of his drinking issue, but it was left untreated. He was caught with hashish during an inspection and was sent to Narcotics Anonymous. In 1981, he was transferred to Fort Benning, Georgia, where things got worse. He returned from the field to find his wife with another man. He became extremely intoxicated, was caught speeding, and was arrested. He spent three days in jail. The military let him down by not helping him. He began acting out more. He fell in with others who were hard partiers and began doing hard drugs. He used marijuana, cocaine, crystal meth, and angel dust. Sitting in the barracks using and drinking one night, someone came into the room and told him some guys were coming to kill him. He was afraid for his life. He and a couple buddies jumped in the car. He eventually ended up in [REDACTED]. When he turned himself in, he was brought up on charges for being absent without leave (AWOL). He was told if he left quietly, his discharge would be automatically upgraded. He believes the recruiter started him on the path to addiction before he was 18 years old. The issues with his wife compounded things. He was angry, depressed, and anxious with no support system to deal with the mental aspects of those events. He self-medicated with drugs and alcohol. This has been a source of shame for him. He is now drug free and sober. He is a marvelous citizen, who takes care of his mother and works every single day. He has held the same job for 24 years. A discharge upgrade would bring him peace of mind.

e. Due to the period of service, no active-duty electronic medical records were available for review. In addition, the applicant submitted no hardcopy medical documentation from his time of service evidencing a behavioral health condition, treatment, or diagnosis.

f. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of OMH. On 14 December 2023, the applicant was notified by the Army Review Boards Agency that he was required to provide medical documentation to support his contention of other mental health condition. To date, no medical documentation has been received.

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

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.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant has been diagnosed with any BH condition.

(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 for any BH condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis or condition. However, per Liberal Consideration guidelines, the applicant's self-assertion of OMH merits consideration by the Board.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, 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 mental health claim and the review

and conclusions of the ARBA BH Advisor. Other than his own statement, the applicant provided no evidence of post-service achievements, and he provided no 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 a behavioral health condition. 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:


<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.

9/16/2024

X 

CHAIRPERSON


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. Section 1556 of Title 10, USC, 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.

3. 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 ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

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 post-traumatic stress disorder; 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. 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.

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//