

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230011673

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 293 (Application for the Review of Discharge)
- military personnel records (13 pages), 16 December 1989 to 4 June 1992
- letter from National Archives, 28 January 2020
- three letters of support, undated
- self-authored statement, 6 May 20203

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:

a. He was the product of an interracial relationship and moved around a lot between two families. His stepmother raised him from the age of 2 years old until he was 15 years old. He went to live with his father's sister until he graduated high school. During his senior year, his aunt had an Army recruiter talk to him, and he joined the delayed entry program. He eventually joined the Army but felt like his aunt gave him no choice since she put all of his belongings out in the street, and he had nowhere else to live.

b. He remembers physical and mental abuse and witnessing terrible things a child should never see or go through growing up. He was never afforded counseling, and there was no one around to show him love or give guidance on a different option or direction in life. There was no family bond with anyone but his stepmother, with whom he lost touch.

c. He felt he did well in the Army until the part of himself that reacts to mental movies of family over the years made him not care. Although his time in the Army was short, he meant no disrespect to the military, and under different circumstances and a better mindset, he believed he would have been a great soldier. He will forever be proud he served but embarrassed he did not fulfill his commitment. He found that with time and maturity, he was not in the right frame of mind to join at the time, and now that he is more mature and a family man, he regrets his actions immensely. The applicant notes other mental health as a condition related to his request.

3. The applicant enlisted in the Regular Army on 31 July 1990 for 4 years. The highest rank/grade he held was private first class/E-3.

4. Three DA Forms 4187 (Personnel Action) show effective 13 November 1991, the applicant's unit reported him absent without leave (AWOL), and on 13 December 1991 he was dropped from the rolls. His duty status changed to returned to military control when he surrendered to civilian authorities on 31 January 1992.

5. On 7 February 1992, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with absencing himself from his unit on or about 13 November 1991 and did remain so absent until on or about 31 January 1992.

6. On 13 February 1992, the applicant underwent a complete mental status evaluation and medical examination as part of his consideration for discharge due to his misconduct. His mental status evaluation noted he met the retention standards and had the mental capacity to understand and participate in proceedings.

7. On 11 March 1992, he consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the uniform code of military justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – 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. He elected to submit a statement in his own behalf.

b. In his statement, the applicant stated that he went AWOL for many reasons, including being AWOL in April 1991, personal money problems, being unable to see his girlfriend, and finding out about his unborn baby. He told his supervisor he wanted to get out of the military because the Army was putting people out anyway and went to legal to try and speed up the process, but he never heard anything back. He requested a general discharge because a UOTHC would hurt him in the civilian world.

8. The applicant's immediate commander recommended approval of the applicant's request for discharge and the issuance of an UOTHC Discharge Certificate.

9. On 6 May 1992, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed the issuance of an UOTHC Discharge Certificate and reduction to private/E-1.

10. The applicant was discharged accordingly on 4 June 1992, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. He was credited with 1 year, 7 months, and 16 days of net active service during the period covered. He had lost time from 13 November 1991 thru 30 January 1992.

11. The applicant provides the following documents which are available in their entirety for the Board's review within the supporting documents:

a. Military personnel records and a letter of response from the National Archives showing he requested and was sent copies of his official military personnel files.

b. Three letters of support including one from his daughter, which state he is a loving, caring, and dedicated father and friend with outstanding character and judgement. He loves to help others and sets a notable example for others to follow.

12. The applicant petitioned the ABCMR requesting correction of his reentry code which would allow him to reenter the Army. On 14 December 1994, the Board considered the applicant's request and after reviewing his application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

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

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. 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 in the Regular Army on 31 July 1990 and the highest rank he achieved was E-3, 2) the applicant was reported absent without leave (AWOL) on 13 November 1991 and was returned to military control on 31 January 1992, 3) court-martial charges were preferred against the applicant on 07 February 1992 for AWOL, 4) his mental status examination conducted on 13 February 1992 completed in conjunction with separation indicated he met retention standards and had the mental capacity to participate in proceedings, 5) in the applicant's self-statement he indicated he went AWOL for many reasons to include financial problems, unable to see his girlfriend, and finding out about his unborn baby. The applicant also indicated he was considered AWOL in April 1991 due to an accident and being in the hospital rendering him unable to return to duty on-time, 6) the applicant was discharged on 04 June 1992 under the provisions of Army Regulation (AR) 635-200, Chapter 10 for the good of the service-in lieu of trial by court martial, 7) the applicant previously petitioned the ABCMR requesting correction to his reentry code and on 14 December 1994 the Board denied the request.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. The applicant did not provide any civilian BH records as part of his application. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service DA 3822 Report of Mental Status Examination conducted on 13 February 1992 as part of his Chapter 10 separation indicated the applicant met retention standards IAW AR 40-501 and had the mental capacity to participate in administrative proceedings. A medical examination conducted on 13 February 1992 also documented item number 42, psychiatric, as 'normal' on clinical evaluation. There were no other in-service treatment records available for review.

d. Records in JLV were available for review from 06 February 2020 through 25 April 2023. Review of JLV shows that the applicant is 0% service-connected for neurosis for

care only. The Compensation and Pension (C&P) examination is not available for review so the symptoms or experiences leading to the service connection per the medical record are unknown. He initiated care through the VA for housing support on 21 February 2020. On 01 June 2020, the applicant was seeking mental health assistance for anxiety related to being temporarily separated from his daughter while he was locating a permanent housing solution. A VA note dated 05 June 2020 indicated the applicant was reporting a history of additional mental health concerns to include misinterpreting social interactions which contributed to frustration and anger, feeling uneasy around others, always thinking, making careless mistakes, difficulty slowing down. It was also documented that the applicant reported he was previously prescribed Aripiprazole by a civilian provider at Summit Psychological which was documented to help slow down his thoughts and be more organized. At the time of the visit he was diagnosed with Bipolar Disorder, Unspecified. He was subsequently prescribed Abilify and Depakote through the VA for management of Bipolar Disorder and Hydroxyzine for management of anxiety. There is no documentation in the record to indicate the onset of Bipolar Disorder and no association of the condition to his service.

e. The applicant provided letters of support as part of his application. The letters reference the applicant as an upstanding citizen and father though do not reference any mental health issues he may have struggled with in the military. He also provided a self-statement as part of his application asserting that he experienced childhood difficulties that impacted him during his service.

f. The applicant is petitioning the Board to upgrade his UOTHC discharge. The applicant contends that he experienced Other Mental Health Issues which mitigates his misconduct. The applicant is 0% SC through the VA for neurosis, which is a term used to describe anxiety. Anxiety-based conditions are prone to avoidance, of which AWOL is considered an avoidance behavior. As such, given the association between avoidance and AWOL, BH medical mitigation is supported.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues. The applicant is also 0% service connected for Neurosis through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 0% service connected for Neurosis through the VA. Service connection establishes that the condition existed during service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant is 0% service connected through the VA for neurosis, a term used to describe anxiety. Avoidance behaviors are common among anxiety-based conditions, of which AWOL is constituted as an avoidance behavior. As there is an association

between AWOL and avoidance behaviors, there is a nexus between his VA service-connected condition of neurosis and the circumstances that led to his discharge. As such, BH medical mitigation is supported.

BOARD DISCUSSION:

1. 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 mental health claim and the review and conclusions of the ARBA Medical Advisor.
2. The Board concurred with the conclusion of the medical advising official regarding the applicant's misconduct being mitigated by his mental health. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

3/29/2025

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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. Title 10, U.S. Code, 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, in effect at the time, set forth the primary authority for separating enlisted personnel.
 - a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the UCMJ and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a

consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

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 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.

5. 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 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.

//NOTHING FOLLOWS//