

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230011770

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)
- self-authored statement, undated
- DD Form 214 (Report of Separation from Active Duty), 17 January 1979
- DD Form 215 (Correction to DD Form 214), 10 February 1984

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. During his deployment to Korea on or about September or October 1978, he was on a firing mission on the 38th parallel with his unit. While on the firing mission, he fired two rounds after receiving the coordinates from his firing officer and hit two North Korean barracks. The coordinates he was given were wrong, and the North Koreans surrounded his unit for three days. After returning to Camp House Korea, he was summoned to his lieutenant colonel's office, where he was presented with over one hundred charges.

b. He never found out how many people were killed. Still, he was unofficially charged with everything and supposedly held accountable for the mistakes and errors on the firing mission. He was isolated, repeatedly interrogated, made to feel he had to sign papers taking responsibility for everything that happened, and threatened with confinement in Leavenworth for 21 years to life if he did not confess.

c. He was sent back to the United States and, after a few days, he was pressured to accept a UOTHC discharge. He signed his discharge papers without conscious knowledge of all that was entailed. He was not versed in the law or given information on what would happen to him. He was told that after 90 days of discharge, his UOTHC would be upgraded to a general discharge. He never received an upgrade and has spent countless years filing legal petitions.

d. He relives this horrific time in his life every night and day. He suffers from mental anguish and post-traumatic stress disorder (PTSD). He believes he should not have been made to suffer for something he was ordered to do. He asks the Board to grant him relief to clear his name and receive the medical help he deserves.

3. The applicant enlisted in the Regular Army on 24 January 1978, for 3 years. The highest rank/grade he held was private/E-2.

4. On 8 November 1978, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- on or about 6 October 1978, being disrespectful toward a superior noncommissioned officer
- on or about 16 October 1978, being disrespectful in language and twice disobeying a lawful order from his superior noncommissioned officer
- on or about 18 October 1978, failing to go at the time prescribed to his appointed place of duty
- on or about 20 October 1978, wrongfully communicating a threat to his sergeant

5. On 13 December 1978, 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 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.

- b. Documentation as to whether the applicant elected or did not elect to submit statements in his own behalf are not available for review.
6. The applicant's chain of command recommended approval of the applicant's request for discharge and the issuance of an UOTHC Discharge Certificate.
7. On 22 December 1978, the applicant accepted non-judicial punishment under Article 15, of the UCMJ, for on or about 5 November 1978, being derelict in the performance of his duties; and on or about 14 November 1978, being disrespectful in language toward his superior noncommissioned officer. The applicant's DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) is missing a continuation page with additional charges. His punishment included forfeiture of \$100.00 pay for one month, restriction and extra duty for 30 days.
8. On 26 December 1978 and 28 December 1978, the applicant underwent a complete medical examination and mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met the retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.
9. On 28 December 1978, the separation authority approved the applicant's request for discharge for the good of the service – in lieu of trial by court-martial and directed the issuance of an UOTHC Discharge Certificate.
10. The applicant was discharged accordingly on 17 January 1979, 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 received a separation program designator code of "JFS" and reenlistment (RE) code of "RE-3." He was credited with 11 months and 24 days of net active service with 7 months and 19 days of foreign service in Korea (28 May 1978 to 16 January 1979) during the period covered.
11. On 10 February 1984, the applicant was issued a DD Form 215 (Correction to DD Form 214), correcting his DD Form 214 by adding the additional RE code of "RE-3C" to block 10 (RE code).
12. 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.

13. 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.

14. Based on the applicant's contention of PTSD, the Army Review Boards Agency (ARBA) medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section. This agency does not provide copies of ARBA Medical Staff reviews to applicant's and/or their legal representatives prior to adjudication of the case.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his under other than honorable conditions discharge. He contends PTSD mitigates his discharge.

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 enlisted into the Regular Army on 24 January 1978.
- On 8 November 1978, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:
 - on or about 6 October 1978, being disrespectful toward a superior noncommissioned officer
 - on or about 16 October 1978, being disrespectful in language and twice disobeying a lawful order from his superior noncommissioned officer
 - on or about 18 October 1978, failing to go at the time prescribed to his appointed place of duty
 - on or about 20 October 1978, wrongfully communicating a threat to his sergeant
- 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.
- On 22 December 1978, the applicant accepted non-judicial punishment under Article 15, of the UCMJ, for on or about 5 November 1978, being derelict in the performance of his duties; and on or about 14 November 1978, being disrespectful in language toward his superior noncommissioned officer. The applicant's DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) is missing a continuation page with additional charges.
- Applicant was discharged on 17 January 1979, 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 received a separation program designator code of "JFS" and reenlistment (RE) code of "RE-3." He was credited with 11 months and 24 days of net active

service with 7 months and 19 days of foreign service in Korea (28 May 1978 to 16 January 1979) during the period covered.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states during his deployment to Korea on or about September or October 1978, he was on a firing mission on the 38th parallel with his unit. While on the firing mission, he fired two rounds after receiving the coordinates from his firing officer and hit two North Korean barracks. The coordinates he was given were wrong, and the North Koreans surrounded his unit for three days. After returning to Camp House Korea, he was summoned to his lieutenant colonel's office, where he was presented with over one hundred charges. He never found out how many people were killed. Still, he was unofficially charged with everything and supposedly held accountable for the mistakes and errors on the firing mission. He was isolated, repeatedly interrogated, made to feel he had to sign papers taking responsibility for everything that happened, and threatened with confinement in Leavenworth for 21 years to life if he did not confess. He was sent back to the United States and, after a few days, he was pressured to accept a UOTHC discharge. He signed his discharge papers without conscious knowledge of all that was entailed. He was not versed in the law or given information on what would happen to him. He was told that after 90 days of discharge, his UOTHC would be upgraded to a general discharge. He never received an upgrade and has spent countless years filing legal petitions. He relives this horrific time in his life every night and day. He suffers from mental anguish and post-traumatic stress disorder (PTSD). He believes he should not have been made to suffer for something he was ordered to do. He asks the Board to grant him relief to clear his name and receive the medical help he deserves. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows on 26 December 1978 the applicant participated in a medical examination for the purpose of separation. The applicant did not endorse any concerns regarding depression, anxiety or sleep disturbance. In addition, on 28 December 1978, the applicant underwent a mental status evaluation as part of the separation process. His mental status evaluation noted, he had no significant mental illness, met retention standards, was mentally responsible, was able to distinguish right from wrong and adhere to the right and had the mental capacity to understand and participate in board proceedings.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic behavioral health 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 PTSD.

e. 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 condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with PTSD or any other behavioral health condition during military service or after his discharge.

(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 PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition.

g. However, per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 evidence shows

a. The applicant was charged with commission of offenses (being disrespectful toward a superior NCO, being disrespectful in language and twice disobeying a lawful order from his superior NCO, failing to go at the time prescribed to his appointed place of duty, and wrongfully communicating a threat to his sergeant) 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.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Also, 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 and reason for separation the applicant received upon separation were 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.



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 (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 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//