

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011779

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different type of separation, different separation code, and different narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214, for the period ending 11 June 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. At the time of his discharge, he was home on a hardship due to his son passing away and his wife's sickness after giving birth. He was also dealing with his wife being raped by her father. These stressors made it impossible for him to conform to Army standards. He did not report back to his unit and was discharged with an under other than honorable conditions discharge.

b. He believes this was unfair. His discharge has damaged his life and made getting a career with living wages almost impossible. He is also unable to get healthcare or any other assistance through the Department of Veterans Affairs (VA).

c. He has been trying to complete his bachelor's degree in social services and has the goal of finishing the last 10 credit hours this year. He has been doing community

service with his church for the past 6 years. He also sits on the board of The Church of America Back to School Program for the last 5 years.

- d. He annotated other mental health as an issue/condition related to his request.
3. On 5 June 1980, the applicant enlisted in the Regular Army.
4. On 23 March 1982, the applicant's duty changed from ordinary leave to absent without leave (AWOL).
5. On 24 March 1982, the applicant's duty status changed from AWOL to present for duty (PDY).
6. On 13 April 1983, he accepted nonjudicial punishment for failure to be at his appointed place of duty and unlawfully striking his spouse in the face and facial area with his open hand and fist and banging her head against a wall with his hands. His punishment included reduction to the grade of private/E-2.
7. On 24 August 1983, the applicant's duty status changed from PDY to ordinary leave.
8. On 10 September 1983, the applicant's duty status changed from ordinary leave to AWOL. He was subsequently dropped from the rolls (DFR) on 10 October 1983.
9. On 20 March 1984, he surrendered to military authorities and his duty status was changed from DFR to PDY.
10. On 21 March 1984, the applicant declined to undergo a medical examination.
11. On 17 April 1984, the applicant was psychiatrically cleared for any administrative action deemed appropriate by command.
12. On 18 April 1984, charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from 10 September 1983 to 20 March 1984.
13. On 18 April 1984, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an under other than honorable conditions discharge if his request was approved, and of the procedures and rights available to him. Following the consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request, he acknowledged:

a. He understood that submitting this request for discharge that he was guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

b. Moreover, he hereby stated that under no circumstance did he desire further rehabilitation for he had no desire to perform military service.

c. He had been advised and understood the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he would be deprived of many or all Army benefits that he may be ineligible for many, or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

d. He also understood that he may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Conditions Discharge.

e. He also understood that he may, up until the date the discharge authority approves his discharge, withdraw his acceptance of this discharge.

14. On 21 May 1984, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Other Than Honorable Conditions Discharge Certificate.

15. On 24 May 1984, consistent with the chain of command recommendations, the separation authority approved the applicant's separation from the service under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an Other Than Honorable Conditions Discharge Certificate and the applicant's reduction to private/E-1.

16. The applicant was discharged from active duty on 11 June 1984. His DD Form 214 shows he completed 3 years, 5 months, and 26 days. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Good Conduct Medal, Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- item 24 (Character of Service): under other than honorable conditions
- item 25 (Separation Authority): AR 635-200, Chapter 10
- item 26 (Separation Code): KFS
- item 27 (Reenlistment Code): RE 3B, 3, 3C
- item 28 (Narrative Reason for Separation): for the good of the service – in lieu of court-martial

17. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

18. By regulation (AR 635-200), a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

19. Also by regulation, the narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in tables 2–2 or 2–3 of AR 635-5-1. No deviation is authorized. For Soldiers separating with separation program designator (SPD) code “KFS” the narrative reason for separation is In Lieu of Trial by Court Martial, the regulatory authority is AR 635-200, chapter 10.

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

21. MEDICAL REVIEW:

a. The applicant requests upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related to Other Mental Health Issues.

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 in the Regular Army on 5 June 1984.
- On 13 April 1983, he accepted nonjudicial punishment for failure to be at his appointed place of duty and unlawfully striking his spouse in the face and facial area with his open hand and fist and banging her head against a wall with his hands.
- On 18 April 1984, charges were preferred against the applicant. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from 10 September 1983 to 20 March 1984.
- On 18 April 1984, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial. Following the consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- On 21 May 1984, the immediate and intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Other Than Honorable Conditions Discharge Certificate.
- On 24 May 1984, consistent with the chain of command recommendations, the separation authority approved the applicant's separation from the service under

the provisions of AR 635-200, Chapter 10. The applicant was discharged, accordingly, on 11 June 1984.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is a Report of Mental Status Evaluation, dated 17 April 1984, that shows the applicant was psychiatrically cleared for any administrative actions deemed appropriate by command. On 21 March 1984, the applicant declined to undergo a medical examination. Also included in the casefile is multiple are a number of SF 600 showing treatment visits for various physical issues, but none related to a BH condition. The applicant also provided medical records from Children's Hospital from 31 March 1991 – 28 October 1983. Records reflect, in part, the applicant's son was born at 33 weeks gestation on 21 May 1981, was treated for jaundice, transient respiratory distress, and borderline small for gestational age. The child was discharged on 15 June 1981, noted by the discharging physician as "doing well at the time". Records show the child was also hospitalized from 23 October 1983 – 28 October 1983, during which time he underwent surgery for Achilles lengthening. The same records also indicates the child was diagnosed with cerebral palsy shortly after birth. It should be noted that the records provided predates the applicant enlistment into the Army. Records did not contain documentation stating the applicant's son died. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability.

d. The applicant requests upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to Other Mental Health Issues. 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. The applicant asserts that he was dealing with multiple stressors at the time he went AWOL to include the purported death of his son and issues related to his spouse. While it is reasonable that the events outlined were stressful, there is no evidence that the applicant had a condition that impaired his ability to differentiate between right and wrong and adhere to the right. In absence of medical documentation supporting the applicant's assertion that his misconduct was related to Other Mental Health Issues, there is insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues.

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 his misconduct was related to Other Mental Health Issues, and per liberal guidance his contention 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 to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes.

(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. The applicant asserts that he was dealing with multiple stressors at the time he went AWOL to include the purported death of his son and issues related to his spouse. While it is reasonable that the events outlined were stressful, there is no evidence that the applicant had a condition that impaired his ability to differentiate between right and wrong and adhere to the right. In absence of medical documentation supporting the applicant's assertion that his misconduct was related to Other Mental Health Issues, there is insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues.

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 Board considered the medical advisor's review, the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 10 September 1983 to 20 March 1984, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board concurred with the medical advisor's review and concluded that the characterization of service, narrative reason for separation and corresponding separation code the applicant received upon separation was appropriate.

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.

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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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19.

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.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their

discharges due in whole or in part to: mental health conditions, including 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, 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes prescribes the specific authorities, reasons for separation Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in tables 2–2 or 2–3 of this regulation. No deviation is authorized. For Soldiers separating with separation program designator (SPD) code “KFS” the narrative reason for separation is In Lieu of Trial by Court Martial, the regulatory authority is AR 635-200, chapter 10.

6. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for

a. Item 26 (Separation Code) contains the correct entry form AR 635-5-1, which provides the corresponding SPD code for the regulatory authority and reason for separation.

b. Item 27 (Reentry Code) AR 601–210 determines reentry eligibility and provides regulatory guidance on reentry codes.

c. Item 28 (Narrative Reason for Separation) this is based on regulatory or other authority and can be checked against the cross reference in AR 635–5–1.

7. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the U.S. Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//