

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011784

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

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- Four Letters of Support

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 he had family members that passed away while he was serving in the Army which started his drinking. He annotated other mental health as an issue/condition related to his request.
3. Through a separate self-authored statement the applicant states:
 - a. He volunteered and joined the Army at the age of 18 years old. He was a great Soldier and advanced very quickly through the ranks. He achieved the rank/grade of sergeant/E-5 within 2 and a half years. While serving in Germany, his sister suddenly passed away. He was contacted by Red Cross; he went on emergency leave for his sister's funeral. When he returned to Germany, he began frequently drinking alcohol.
 - b. He reenlisted for 6 more years and had a permanent change of station to Fort Lewis, Washington. He received a driving while intoxicated charge and had to enter a 28-day drug and alcohol rehabilitation program as a sergeant. After successfully completing the program, he was deployed to Korea, where no treatment program was in place at the time. He eventually relapsed and started drinking alcohol.

c. His mind was messed up and his decision making was altered. He made stupid decisions, which led to a reduction in his rank and he was eventually discharged from the Army. Alcohol has been a lifelong struggle for him. He is still recovering and no longer drink alcohol or use any other drug. He is happy again and proud of himself. He is now 62 years old and requesting and pleading for an upgrade of his discharge.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 13 March 1979 and had an immediate reenlistment on 14 September 1981 in the grade/rank of specialist/E-4.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service):

- service in Germany from 6 July 1979 to 2 November 1981
- service in Korea from 1 November 1983 to 21 December 1984

c. The applicant accepted nonjudicial punishment (NJP) on 8 November 1984 for:

- failing to go to his appointed place of duty
- failing to follow a lawful order by a commissioned officer by leaving the company area
- derelict in his duties by not returning keys to the company
- making a knowingly false statement to a commissioned officer

d. The applicant accepted NJP on the following dates:

- 14 December 1984, for failing to go to his appointed place of duty and absenting himself from your unit from 19 November 1984 to on or about 21 November 1984
- 20 November 1985, for failing to go to his appointed place of duty and failing to obey a lawful order
- 20 February 1986, for being absent without leave (AWOL) from his unit from on 1 February 1986 to 3 February 1986; his punishment included reduction to private/E-1

e. On 21 February 1986, charges were preferred on the applicant for one specification of AWOL from 19 December 1985 to 21 January 1986.

f. On 21 February 1986, the applicant, through counsel, submitted a request for discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- he may request discharge for the good of the service because charges have been preferred against him under the Uniform Code of Military Justice (UCMJ), which authorize the imposition of a bad conduct or dishonorable discharge
- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person. He was advised of the implications that are attached to it
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service
- he had the opportunity to consult with appointed counsel for consultation.
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, that he may be ineligible for many, or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law
- his election to submit a statement is void from his record

g. On 5 August 1986, the separation authority approved the applicant's discharge for the good of the service. He directed the applicant receive a discharge certificate under other than honorable conditions. If service member is serving in a pay grade above E-1 at the time of the action, service member will be reduced to PVT/E-1 prior to the execution of the discharge.

h. On 22 August 1986, the applicant was discharged accordingly in accordance with chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he is assigned Separation Code KFS and Reentry Code 3/3B/3C. It also shows:

- he completed 7 years, 4 months, and 5 days of active service.
- he had two periods of lost time from 19 November 1984 to 20 November 1984 and from 19 December 1985 to 20 January 1986
- his immediate reenlistment is listed but not his continuous honorable service
- he was awarded or authorized the Overseas Service Ribbon, Army Achievement Medal, Army Good Conduct Medal, Army Service Ribbon, Noncommissioned Officer Professional Development Ribbon, Expert Marksmanship Qualification Badge with Rifle Bar (M-16), and the Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

5. The applicant provides four character reference letters that attest to him being a loving father, grandfather, and friend. He served proudly in the military at an early age and learned many qualities and skills, which helped with raising his kids. He had instilled great qualities into his children like: good morals, respect, integrity, and determination. His first discharge was honorable and of course he made a mistake. He barely has enough money to survive month to month. Hopefully the Board will give him a second chance to earn some respect back and upgrade his discharge.

6. His record contains a letter from the Army Discharge Review Board (ADRB), dated 30 June 1993, which shows after careful consideration of his military records and all other available evidence, the ADRB determined that he was properly discharged. His request for a change in the type and nature of discharge was denied.

7. By regulation (AR 635-200), a Soldier who has committed an offense or offenses, the punishment for which, under the UCMJ, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

8. 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.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He annotated other mental health as an issue/condition related to his request. 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 RA on 13 March 1979 and had an immediate reenlistment on 14 September 1981.
- Applicant served in Germany from 6 July 1979 to 2 November 1981 and in Korea from 1 November 1983 to 21 December 1984.
- Applicant accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 8 November 1984 for:
 - failing to go to his appointed place of duty
 - failing to follow lawful order by a commissioned officer by leaving company area
 - derelict in his duties by not returning keys to the company
 - making a knowingly false statement to a commissioned officer
- Applicant accepted NJP on the following dates:
 - 14 December 1984, for failing to go to his appointed place of duty and absenting himself from your unit from 19 November 1984 to on or about 21 November 1984

- 20 November 1985, for failing to go to his appointed place of duty and failing to obey a lawful order
- 20 February 1986, for being WOL on 1 February 1986 to 3 February 1986
- On 21 February 1986, charges were preferred on the applicant for one specification of AWOL from 19 December 1985 to 21 January 1986.
- On 22 August 1986, the applicant was discharged for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) with an under other than honorable conditions characterization of service.

b. 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 293, his ABCMR Record of Proceedings (ROP), DD Form 214, self-authored statement, letters of support, 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.

c. The applicant states he volunteered and joined the Army at the age of 18 years old. He was a great Soldier and advanced very quickly through the ranks. He achieved the rank/grade of sergeant/E-5 within 2 and a half years. While serving in Germany, his sister suddenly passed away. He was contacted by Red Cross; he went on emergency leave for his sister's funeral. When he returned to Germany, he began frequently drinking alcohol. He reenlisted for 6 more years and had a permanent change of station to Fort Lewis, Washington. He received a driving while intoxicated charge and had to enter a 28-day drug and alcohol rehabilitation program as a sergeant. After successfully completing the program, he was deployed to Korea, where no treatment program was in place at the time. He eventually relapsed and started drinking alcohol. His mind was messed up and his decision making was altered. He made stupid decisions, which led to a reduction in his rank and he was eventually discharged from the Army. Alcohol has been a lifelong struggle for him. He is still recovering and no longer drinks alcohol or uses any other drug. He is happy again and proud of himself. He is now 62 years old and requesting and pleading for an upgrade of his discharge.

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in service. The VA electronic medical record indicates the applicant is not service connected. The VA record evidences eleven inpatient admissions between December 1996 and January 2012 for the purpose of engaging in substance abuse treatment. The initial admission diagnosed the applicant with Cocaine Dependence, Alcohol dependence, and Cannabis Abuse. During an admission on 2 August 2007, he was diagnosed with Polysubstance Dependence; Substance induced mood disorder; Substance induced psychosis; Rule-out of malingering, since his symptoms were inconsistent; and Rule-out of Antisocial Personality Disorder. During his

admission on 16 August 2010, he reported a history of over 27 years of extensive crack cocaine use. Following his discharge, he was referred to residential treatment and was able to maintain sobriety for a period of time. The applicant was once again admitted on 20 December 2011 after having relapsed. He was diagnosed with Cocaine Dependence. The record further evidences ongoing support from the VA with medical issues, housing insecurity and legal issues. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a behavioral health condition during military service that mitigates his discharge.

g. 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? Yes. The applicant reports experiencing the death of his sister while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The record does not evidence any BH condition during military service and the applicant is not service connected. The applicant's VA medical record indicates he engaged in decades of polysubstance abuse that eventually resulted in substance induced hallucinations and mood disorder. The applicant's behavioral health diagnoses occurred in the context of polysubstance abuse induced episodes and the record indicates the applicant may have engaged in inaccurate reporting. Overall, the applicant's psychiatric episodes presented more than two decades post-military service, after over 20 years of extensive polysubstance abuse.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant was charged with commission of an offense (AWOL) 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. 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 the applicant received upon separation was not in error or unjust.

b. The applicant provided character reference letters in support of a clemency determination. The authors speak of the applicant being a loving father, grandfather, and friend. He served proudly in the military at an early age and learned many qualities and skills, which helped with raising his kids. He had instilled great qualities into his children like good morals, respect, integrity, and determination. The Board took the letters into consideration and determined that while his service clearly did not rise to the level required for an honorable characterization (given his multiple NJPs and AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

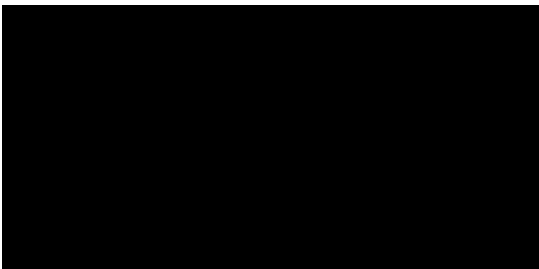
BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, 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 amending the applicant a DD Form 214 ending on 22 August 1986 to show Character of Service: Under Honorable Conditions (General).



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 22 August 1986, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries to item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 13 March 1979 UNTIL 13 September 1981

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate, if such is merited by the Soldier's overall record during the current enlistment.

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 Service Boards for Correction of Military/Naval Records (BCM/NR) 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, 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//