

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011800

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service. Additionally, he requests 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

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130009381 on 28 January 2014.
2. As a new argument, the applicant states, when he enlisted in the Army, he was struggling with mental health issues. He hid it from friends, family, and the military. He was abused by his mother's husband on a daily basis from the age of 7 to 19 years old. He tried to cope, but life in the military made it worse. If he did not follow instructions, he would be disciplined. He felt like everyone was trying to control him. No one ever asked him about his feelings. When he got out of the Army, there were "ups and downs." He spoke with Veterans who told him he was experiencing trauma from his childhood. He still has nightmares and struggles every day. If he knew then what he knows now, he would have had his mother's husband arrested and given the military his all.
3. The applicant enlisted in the Regular Army on 4 May 1981. Upon completion of initial entry training, he was awarded military occupational specialty 94B (Food Service Specialist). The highest rank he attained was private/E-2.
4. The applicant was confined by civilian authorities on 24 March 1982 for non-payment of child support.

5. On 5 April 1982, he was reported as absent without leave (AWOL) after departing the Muscogee County Jail. He surrendered to military authorities on 13 April 1982 and was reported as Present for Duty (PDY).
6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 16 April 1982, for being AWOL, from on or about 5 April 1982 until on or about 13 April 1982. His sentence consisted of reduction to private/E-1, forfeiture of \$50.00 pay, extra duty for seven days, and 14 days of restriction.
7. The applicant was reported AWOL on 29 June 1982. He surrendered to military authorities on 2 July 1982 and was reported as PDY.
8. The applicant was reported as AWOL on 3 July 1982. He surrendered and was confined by military authorities on 13 July 1982. On that same date, he was dismissed without trial and reported as PDY.
9. On 14 July 1982, he was confined by military authorities pending trial by court-martial. The applicant's service record is void of any documentation pertaining to court-martial proceedings.
10. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 13 September 1982, for wrongfully possessing .5 grams of marijuana and rolling papers, on or about 5 September 1982. His sentence consisted of forfeiture of \$100.00 pay, extra duty for 14 days, and 14 days of restriction.
11. On 21 September 1982, the applicant's immediate commander formally recommended the applicant's separation from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33, by reason of misconduct – frequent incidents of a discreditable nature. As reasons for the recommended action, the commander noted the applicant's conduct and efficiency ratings were unsatisfactory; after being moved to brigade for correctional training, he failed to react constructively to rehabilitation; his behavior, attitude, and ability precluded accomplishment of the objective; and he demonstrated little desire to return to duty.
12. The intermediate commander concurred with the recommended separation action on 22 September 1982 and further recommended the waiver of additional counseling and rehabilitation requirements.
13. The applicant's service record is void of documentation showing the applicant's notification of separation from the commander. However, the applicant consulted with legal counsel on 24 September 1982. He acknowledged being advised of the basis for

the contemplated separation action and its effects; of the rights available to him; and the effect of waiving his rights. He waived consideration by a board of officers. He further acknowledged understanding that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of an UOTHC discharge. He elected not to submit a statement in his own behalf.

14. The applicant underwent a mental status examination on 30 September 1982. The examining provider determined there was no impression of significant mental illness, and he had the mental capacity to participate in board proceedings.

15. The separation authority approved the recommended discharge on 1 October 1982, waived further rehabilitation requirements, and directed the issuance of an UOTHC Discharge Certificate.

16. The applicant was discharged on 6 October 1982, under the provisions of AR 635-200, paragraph 14-33b (1), by reason of frequent involvement in incidents of a discreditable nature with civil or military authorities. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his service was characterized as UOTHC, with separation code JKA and reenlistment code RE-3, 3B. He was credited with 1 year, 2 months, and 9 days of net active service, with lost time from 24 March 1982 to 12 April 1982, 29 June 1982 to 1 July 1982, 3 July 1982 to 12 July 1982, and 14 July 1982 to 2 September 1982.

17. The Army Discharge Review Board (ADRB) reviewed the applicant's request for a discharge upgrade on 7 December 1984. After careful consideration, the Board determined his discharge was proper and equitable. The Board denied his request for relief.

18. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC discharge on 28 January 2014. After careful consideration, the Board determined the applicant provided no evidence or convincing argument that would entitle him to an upgrade. His misconduct diminished the quality of his service below that which would merit a general or honorable discharge. His request for relief was denied.

19. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, by reason of misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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

21. Based upon the applicant's contention of "other mental health," the Army Review Boards Agency (ARBA) medical staff provides a written review of the applicant's medical records, outlined in the "MEDICAL REVIEW" section of this Record of Proceedings.

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. The applicant contends his behavior was associated with 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:

c. The applicant previously petitioned the Army Board for Correction of Military Records (ABCMR) requesting upgrade of his UOTHC, Docket Number AR20130009381. At the time of the request, the applicant noted that he did not adjust well to military life due lack of responsibilities and spoiled life.

d. In his new petition, the applicant is asserting that he had mental health issues when he enlisted in the Army that were exacerbated by service. The applicant asserts that his mental health issues stem from childhood abuse that occurred on a daily basis from ages 7 to 19 years old. The applicant further asserts that he hid his issues from his friends, family and the military.

e. The applicant enlisted in the Regular Army on 04 May 1981. The applicant was confined by civil authorities on 24 March 1982 for non-payment of child support. He was reported Absent Without Leave (AWOL) on three separate occasions from 16 April 1982 through 03 July 1982. He was confined by military authorities on 14 July 1982 pending trial by court martial; however, the record is void of any documentation pertaining to court martial proceedings. The applicant was administered nonjudicial punishment of Article 15 on 13 September 1982 for wrongfully possessing 0.5 grams of marijuana and rolling papers.

f. The applicant was recommended for separation from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-33, by reason of misconduct – frequent incidents of a discreditable nature. The Commander noted the reasons for recommendation as the applicant's conduct and efficiency ratings being unsatisfactory and continued behavioral problems despite corrective training and rehabilitation. After notification of the basis for separation and effects of the anticipated discharge, the applicant elected to not submit a statement on his behalf.

g. The applicant underwent a mental status examination as part of his chapter separation on 30 September 1982. The provider documented that the applicant did not have any significant mental illness and had the mental capacity to participate in board proceedings.

h. The applicant was discharged on 06 October 1982 of AR 635-200, paragraph 14-33b (1), by reason of frequent involvement in incidents of a discreditable nature with civil or military authorities.

i. The Army Discharge Review Board (ARDB) reviewed the applicant's request for discharge upgrade on 07 December 1984. The ARDB determined that his discharge was proper and equitable.

j. The ABCMR review conducted on 28 January 2014 also determined that his discharge was proper and equitable and denied his request for relief.

k. Review of Available Records Including Medical:  
The VA electronic medical record (JLV), ROP and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. A DA 3822 Report of Mental Status Examination form was provided as part of his military BH records. No BH-related civilian records were provided for review. A review of JLV and MEDCHART was void of any treatment history for the applicant and he does not have a service-connected (SC) disability. The applicant requests reconsideration of a request to upgrade his UOTHC characterization. He contends his misconduct was related to Other Mental Health Issues pertaining to childhood abuse that was exacerbated by military service. On form DD Form 149, the applicant indicated this request is not related to any contingency operations and there is no documentation provided that the applicant deployed while in-service. A form DA 3822 Report of Mental Status Examination dated September 30, 1982 conducted as part of his chapter separation found there was no evidence of significant mental illness and he has the capacity to understand and participate in board hearings. A review of 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. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

l. 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 assertion is sufficient to warrant the Board's consideration.

## m. 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, per the applicant's assertion.

(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. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other mental Health Issues and insufficient evidence to support and upgrade based on BH medical mitigation. Moreover, Other mental Health Issues would not provide mitigation for some of the reported misconduct such as not paying child support as this behavior is not part of the constellation of symptoms and behaviors associated with BH conditions that would support medical mitigation.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant's chain of command recommended his separation for misconduct due to his frequent involvement in incidents of a discreditable nature with civil or military authorities, following multiple instances of NJP, AWOL, and confinement. He was discharged accordingly after completing 1 year, 2 months, and 9 days of net active service, with multiple periods of lost time. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. 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 the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20130009381 on 28 January 2014.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

2. 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 regulation provides:

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

b. Applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Paragraph 3-7b 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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. 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.

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 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//