

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012044

APPLICANT REQUESTS: in effect, to amend his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 10 July 1972, to upgrade his under other than honorable conditions (UOTHC) discharge due to other mental health issues and sexual harassment. In addition, he asks for a personal appearance before the Board (via video/telephone).

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

- DD Form 149 (Application for Correction of Military Record)
- A change of address letter
- A letter from his Senator to the applicant's father
- Two letters from his Senator to the applicant
- A letter from the Adjutant General, dated 17 April 1972
- DD Form 214 for the period ending 10 July 1972
- A letter to the Department of Veterans Affairs (VA), dated 30 August 2012
- A letter to the Army Review Boards Agency (ARBA), dated 4 October 2012
- A letter to the Board

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 the Red Cross helped him upgrade his discharge to a general and issued him a new DD Form 214 back in 1975 under the Amnesty Act Order by the President. He has been trying to obtain the corrected copy for the past 40 years, and was constantly sent his original DD Form 214, which reflects the UOTHC discharge. He personally thinks this attempt will be the same result he has gotten from the Army in the past. While trying to obtain the correct his discharge document, he also has requested in the past a copy of his behavioral health and medical records and was told they could not be located and that he should ask the Army.

3. The applicant provides:

a. In a letter from Senator [REDACTED] to Mr. [REDACTED] (applicant's father) dated 15 March 1972, stating that he would be pleased to investigate the situation of his son's embarrassing medical problem, but to have him personally write the letter, so he can be of further assistance.

b. On 21 March 1972 Senator [REDACTED] explained to the applicant that he had contacted the proper officials in the Army on his behalf, requesting their assistance in improving his situation. In a second letter, the Senator provides the applicant with the response he received from the Army officials he had previously contacted.

c. On 17 April 1972, in a response from the Adjutant General of the Headquarters, 2nd Armored Division, Fort Hood, TX to Senator [REDACTED] reflects that the applicant had been receiving treatment for prostatitis. His urologists provided that he had been adequately treated and that no further medical duty limitation was warranted, therefore he was not eligible for a medical board action or discharge. He further explains that since the applicant arrived his conduct and efficiency have been unsatisfactory, and his allegations of harassment were unfounded. He had received several reprimands for improper military appearance, failure to follow instructions and his general negative attitude. He also had a history of unexcused absences and has failed to report for extra duty on several occasions. At the time, he was assigned according to his military occupational specialty (MOS) of radio operator, which is consistent with his abilities and the needs of the division. He had not been required to perform any duties which would violate his limitations due to his previous medical profile.

d. In a letter to the Department of Veterans Affairs (VA) dated 30 August 2012, the applicant explains how his attempts to contact someone from the Army have failed. He was requesting a copy of the corrected DD Form 214 from 1976 that changed his characterization of UOTHC to honorable. He received this change in 1978, but due to moving and residing in different states he lost it and was asking for a copy of the correction.

e. On 4 October 2012, in a letter addressed to the Army Review Boards Agency (ARBA) the applicant requests for a copy of his upgraded discharge that he received from the Agency in 1978 or 1979.

f. In a letter to the Board, that is available in its entirety for review, the applicant explains how the love he once had for the Army had turned to pain and dislike. He was harassed while in uniform but off duty, he was arrested and was considered absent without leave (AWOL) from his unit, he was spit on and even called a baby killer. While on duty he was injured and became ill, while seeking treatment for this issue he was called names, belittled, and now received harassment from his leadership. He was even

punished for passing out from the effects of the condition, all this led to him being sent to behavioral health as a result of his suicidal thoughts. He could not understand any of this, everyone was against him simply due to his medical condition. Finally, his commanding officer asked him if we wanted to leave the Army since he was useless, he agreed and received a UOTHC discharge. In 1975 or 1976 the Red Cross helped him upgrade his discharge to a general and issued a new DD Form 214, under the amnesty act order by the President. He has been trying to obtain the corrected copy for the past 40 years, and was constantly send his original DD Form 214, which provides the UOTHC discharge. In addition, his behavioral health and medical records are missing. He is glad to see service members receiving gratitude for their service, even though all he received was humiliation and punishment.

4. The applicant's service record was not available from National Archives and Records Administration (NARA). Therefore it is not available for the Board's review.

5. A DD Form 214 for the period ending 10 July 1972 shows he was discharged with an UOTHC discharge pursuant to AR 635-212 (Discharge Unfitness and Unsuitability). He completed 1 year, 5 months, and 25 days of net active service this period. Lost time during this period was from 23 September 1971 to 1 October 1971 and from 17 January 1972 to 1 February 1972. This document reflects no foreign service time.

6. In a memorandum from the Criminal Investigation Division (CID) dated 18 December 2023, the Army criminal file indexes revealed no sexual assault records pertaining to the applicant.

7. The applicant does not provide any behavioral health documents for the Board's review.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade his under other than honorable conditions (UOTHC) discharge due to other mental health issues and harassment. 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's service record was not available by National Archives and Records Administration (NARA). Therefore, it is not available for the Board's review; 2) DD Form 214 for the period ending 10 July 1972, shows he was discharged with an UOTHC discharge, pursuant to AR 635-212 (Discharge Unfitness and Unsuitability). He completed 1 year, 5 months, and 25 days of net active service this period. Lost time during this period was from 23 September 1971 to 1 October 1971 and from 17 January 1972 to 1 February 1972.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he experienced harassment and mental health conditions that mitigate his misconduct while on active service. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition. The applicant does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced harassment and a mental health condition while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? N/A. There is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of a mental health condition or experience. However, the applicant contends he experienced harassment and a mental health condition while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being insufficient evidence to support the applicant had a mitigating condition or experience. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

12/19/2024

X

CHAIRPERSON

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 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-212 (Discharge Unfitness and Unsuitability) establishes policy, procedures, and guidance for eliminating enlisted personnel who are found to be unfit for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed. To include:
 - a. Frequent incidents of a discreditable nature with civil or military authorities.
 - b. An established pattern for shirking.
 - c. Those persons who are best described as inapt, due to lack of general adaptability, want of readiness of skill, un-handiness or inability to learn.
4. Army Regulation 635-5 (Personnel Separations – Separations Documents) states that the Separation Program Number (SPN) code is a number used in statistical accounting to represent the specific authority and reason for separation. SPN s are an integral part of the authority for separation shown in orders and on the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). SPN 386 is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-212, Unfitness-an established pattern for shirking.
5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

6. Army Regulation 635-8 (Separation Processing and Documents). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

7. Army Regulation 601-210 (Active and Reserve Components Enlistment Program)

8. 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 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. 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.

10. Title 10, U.S. Code, section 1556 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//