

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230012121

APPLICANT AND HIS COUNSEL REQUEST:

- an upgrade of his under other than honorable conditions discharge to honorable
- a change in the narrative reason for separation with respective separation code
- a change in the reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 458 (Charge Sheet)
- Four Character Reference Letters
- [REDACTED] Insurance License
- Applicant's Resume

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. Counsel requests, on behalf of the applicant, an upgrade of the applicant's under other than honorable conditions discharge to honorable, a change in the narrative reason for separation to reflect "Secretarial Authority," with corresponding separation code, and a change in his reentry code from 4 to 1. Counsel's full brief is available for review by the Board, and states in part:

a. It is respectfully submitted that the applicant suffers a material injustice as a result of his discharge from the Army. The applicant was discharged under other than honorable conditions for going absent without leave (AWOL) during his service almost 20 years ago. In accordance with the Wilkie Memorandum the applicant's request for

relief should be considered on the premise that the sentence may have been too harsh for the crime and subsequently, the discharge classified to be inherently punitive. In *Sofranoff v. United States*, the court explained that “since the vast majority of discharges are honorable, the issuance of any other type of discharge stigmatizes ex-servicemen. It robs him of his good name. It injures his economic and social potential as a member of the general community.”

b. Discharging the applicant with an under other than honorable conditions discharge was a punishment that did not fit the crime. This discharge classification stigmatizes the applicant and has indefinite effects on his or her life. Going AWOL does not warrant a life-long brand on his reputation, for which the applicant makes no excuse. Further, he has learned from and paid for his mistake. His initiative and success in his civilian life are a testament to the applicant's character and his ability to be an asset to the Army if given a second chance.

c. The applicant's persevering nature is evidenced in the character letters provided. Since his discharge, the applicant has had success in his own farming business and has been an asset to his community. Additionally, he received his Arizona Insurance License after completing the requirements in 2019 and has maintained consistent employment since his discharge. The applicant also furthered his education at Sierra Community College and Heald College and has led a successful life following his discharge.

3. The applicant and his counsel provide:

a. A self-authored statement from the applicant wherein the applicant states he enlisted in the Army with great pride and strong sense of duty, inspired by his father's distinguished 20-year military service.

(1) Regrettably, his own service was marked by significant challenges. He gained a great sense of confidence at basic combat training (BCT) and during his advanced individual training (AIT) at Fort Gordon, GA, he became increasingly depressed and felt the shock of a sheltered, home-schooled life, to BCT and AIT. The cultures were at very different levels in comparison. As his mental health struggles intensified, he sought professional guidance from the chaplain, the Judge Advocate General (JAG) office, and the on-post psychologist. He was overwhelmed by the weight of his depression. The weight was further increased by losing his battle buddy to separation following drug use over Christmas exodus. He lost a critical pillar of support. He completed AIT and while awaiting return to Fort Benning for jump school, he made the decision to leave his post and return home.

(2) He admits it was not a well-thought out decision, but rather stemmed from his struggle to cope with the emotional and psychological toll he was experiencing. He did feel compelled to take responsibility for his actions and turned himself in to be disciplined. Looking back, he now understands that seeking help and persevering through the challenges would have been a more appropriate course of action. Post discharge, he actively sought help for his depression and for a brief period, was placed on medication to aid in stabilizing his mental health. He has since pursued college courses focused on psychology in pursuit of his own personal growth and to gain a deeper understanding of mental health with coping strategies. He feels better equipped with his personal struggles and has gained valuable knowledge to support others facing similar circumstances.

(3) He has gained valuable life experience in construction, farming, and the insurance industry. In those roles, he employed his interpersonal skills, attention to detail, and his commitment to serving others in a meaningful way. He expresses deep regret for the circumstances that led to his discharge and given the opportunity, he is determined to prove himself as an asset to the military once again. He approaches this process with the utmost sincerity and has learned from the experience.

b. Four character letters describe the applicant as having outstanding character, an asset to the community, a strong sense of duty and responsibility which has served him well in his own successful business ventures (farming). His brother and father confirmed that the applicant expressed great remorse for his actions and has learned from his mistake. Given the opportunity, he would be a great asset to any organization.

- Mr. [REDACTED] (brother) – 28 April 2022
- Mr. [REDACTED], Vice President, Homeowner's Association
- Ms. [REDACTED] (friend of over 10 years) – 9 August 2022
- Mr. [REDACTED] (father) – 25 October 2022

c. Two documents that outline his achievements post-discharge:

- Arizona Insurance License
- Applicant's Resume

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

a. He enlisted in the Regular Army on 3 November 2004.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) lists in Block 21 (Time Lost) 100 days of AWOL from 6 July 2005 to 13 October 2005.

c. Orders 293-7, dated 20 October 2005, indicate the applicant surrendered to military authorities on 14 October 2005 at 1303 hours and assigned him to the Personnel Control Facility at Fort Knox, KY effective 14 October 2005.

d. A DD Form 458 (Charge Sheet) shows on 20 October 2005, court-martial charges were preferred on the applicant for one specification of being AWOL from on or about 6 July 2005 through on or about 14 October 2005.

e. On 20 October 2005, after consulting with legal counsel he requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters

f. On 22 November 2005, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private (E-1).

g. On 7 December 2005, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 9 months and 27 days of active service with 100 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

7. By regulation (AR 635-8), 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

8. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 3 November 2004.
- The applicant was AWOL from 6 July to 13 October 2005 and had court-martial charges preferred against him on 20 October 2005. He requested discharge in lieu of trial by court-martial and was discharged under the provisions of AR 635-200, Chapter 10.
- The applicant was discharged on 7 December 2005 and was credited with 9 months and 27 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he experienced mental health struggles that caused him to go AWOL. He states that he spoke with the chaplain, a JAG, and a psychologist on post about his depressed state, and he discussed difficulty in adjusting due to having lived a "sheltered, home-schooled life." There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed that the applicant initially engaged in mental health treatment on 22 March 2005 with a "behavioral health specialist" (presumably this is enlisted personnel; each note is cosigned by a licensed mental health provider). He reported feelings of depression over the past four months and worries about his fiancé and his future in the military, and he was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood. He was seen for two additional sessions where he primarily discussed a desire to get out of the Army as well as some discord with family and his fiancé. He was taught some relaxation techniques and other stress management skills. On 26 April 2005, the applicant was seen for medication evaluation by a psychiatrist and reported hopelessness, loss of interest, difficulty concentrating, low energy, and irritability, and he denied suicidal ideation. He was started on an antidepressant. Documentation discusses him meeting with the JAG to pursue getting out of the military due to difficulty in adjusting and feeling like he was being bullied by other soldiers.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition at the time of the misconduct, and documentation from DoD providers shows that he was diagnosed with Adjustment Disorder with Anxiety and Depressed Mood.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition, and there is sufficient evidence that he was diagnosed and treated for an Adjustment Disorder with Anxiety and Depressed Mood while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is sufficient evidence that the applicant was experiencing a mental health condition while on active service. By his assertion and the documentation from his time in service, the applicant evidenced mental health symptoms associated with difficulty adjusting to a military environment and was diagnosed with an Adjustment Disorder. He reported attempts to pursue a legal discharge and engaged in help-seeking behavior,

but there is no indication he experienced an event that would be considered traumatic or outside the norm. Therefore, there is no nexus between going AWOL and the typical stressors associated with being new to the military environment. However, per Liberal Consideration there is sufficient evidence for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 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 (AWOL) from 6 July 2005 to 14 October 2005, at which time he surrendered to military control. The Board noted the applicant's multiple character references. The Board reviewed and concurred with the medical advisor finding the applicant was diagnosed with adjustment disorder with anxiety and depressed mood while on active duty which may have contributed to his absence. However, the Board also noted the applicant's absence was in excess of 90 days and therefore granted relief to upgrade the applicant's characterization of service to under honorable conditions (General).

2. Regarding the applicant's request for a change to his narrative reason for separation, separation code, and corresponding reentry code, the Board found no error or injustice in the processing of the applicant's separation and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █: GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 7 December 2005, to show:

- Item 24 (Character of Discharge): under honorable conditions (General)
- item 25 (Separation Authority): No change
- item 26 (Separation Code): no change
- item 27 (Reentry Code): no change
- item 28 (Narrative Reason for Separation): no change

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to amending his narrative reason for separation, separation code, and corresponding reentry code.

7/1/2024

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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 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth 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 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

3. Army Regulation 635-5 (Separation Processing and Documents) states 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214

exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

5. 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.

6. 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; TBI; sexual assault; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. 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.

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//