

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012154

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Applicant Letter/Speech
- Attorney Letter/Brief
- Service Documents
- Articles (two)
- Transcripts
- Certificates (23)
- Diploma
- Applicant Speech/Articles (3)
- Character/Support Letters (52)
- Paintings
- Department of Defense Guidance, 2018

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. He was wrong and humbly apologizes for what he did during his service. He was a juvenile, his discharge happened when he was 18. He was suffering from mental illness. He is not a man of valor. He learned to respect his fellow man and to honor the laws of his country. He no longer drinks alcohol, nor does he use illegal drugs. He was a mentally ill youth who was a good Soldier during his basic training. He was born the tenth of eleven children. His parents were abusive, and he was beaten regularly. He

developed a severe addiction to glue when he was just nine years old, he began stealing glue from hobby shops and sniffing until he was high every day.

b. In his letter to the Governor, he states he has remorse for the person's family he is in prison for. His life has been filled with hurt, pain, and anger. He has been incarcerated for most of his life. Well over 50 years. His crimes were petty, and he took full responsibility for each crime he committed. His crimes were done to supply his mental addiction to airplane glue and alcohol. His parents were illiterate alcoholics. They moved often he did not remember completing any grade in public school. Reading bible verses gives him peace in his life. Since being released from death row he has attended over 25 different programs and completed all of them. He has worked over 10 different jobs and never got into any trouble while working them. He goes outside the prison and does motivational speeches.

3. A letter from counsel reiterates the above and that the applicant was young misguided and used alcohol. He was the only black member of his platoon. He scored "extremely low" on his aptitude test and his core of 40 would make him ineligible for enlistment in the Army of today. He had been able to hide educational deficits through his life to that point, but it became immediately apparent that he would not be able to smile his way through a high-level military desk job. He did not have anyone to go to for help. He had no mentors or friends at Fort Riley, KS, and he quickly and predictably declined having made the switch from glue to alcohol. Shortly before enlisting he began drinking heavily, and pride got the better of him. He was drinking heavily, and he was disciplined for drunk driving and assaulting a sergeant on 3 January 1974. He was absent without leave (AWOL) from 4 January 1973 to 28 January 1973 during which time he was arrested for burglary in Springfield, IL. He pleaded guilty to the burglary offense in April 1974 and served just under a year in prison. Because of this conviction he was discharged from the military in the summer of 1974 at just 19 years old.

a. His alcoholism and his pride cost him his military career. Had he been able to simply admit that he could not read and that he needed help his life would almost certainly have gone in a better direction. In his post military life, he fell deeper and deeper into his alcoholism. In the 1980's he was convicted and sentenced to death row for the 1982 burglary and murder of M.D. In 2003, his death sentence was commuted by the governor to life imprisonment. During his 40 years in prison. He radically transformed himself and attained sobriety, became educated and accomplished many remarkable things. He wrote two books, and worked at the prison chapel. He is deserving of a second chance.

b. He candidly admitted to the 1974 civilian burglary conviction that was the basis for his discharge, in fact he pled guilty to the offense. He was just 19 at the time and had suffered a horrific impoverished childhood filled with psychical abuse, constant

moves, frequent juvenile detention, an addition to sniffing glue, and very little schooling. He was young and misguided. (Complete brief available for review)

4. The applicant enlisted in the Regular Army on 21 August 1972.
5. Before a special court martial at Fort Gordon, GA on 7 March 1973 the applicant was found guilty of:
 - without authority, absenting himself from his unit on or about 4 January 1973 until on or about 28 January 1973
 - assault of Sergeant DBR by striking him in the chest with his fist on or about 3 January 1973
 - operating a passenger car (vehicle) while drunk on or about 3 January 1973
 - the court sentenced him to forfeit \$204.00 per month for 4 months and confinement at hard labor for 4 months
 - the sentence was approved and would be duly executed on 27 March 2023
6. Special Court Martial Order Number 1128, dated 10 May 1973, U.S. Army Retraining Brigade, Fort Riley, KS shows the unexecuted sentence to confinement at hard labor for 4 months was suspended.
7. The applicant was AWOL on 9 October 1973 and dropped from the rolls as a deserter on 7 November 1973.
8. Before a special court martial at Fort Leonard Wood, MO, the applicant was found guilty of being absent from his unit from on or about 12 June 1973, except the words and figures "and did remain so absent until on or about 12 July 1973", of the excepted words: Not guilty. No sentence was adjudged.
9. The applicant was apprehended by civil authorities on 9 December 1973 for burglary/theft charges. He was incarcerated and awaiting a court date. Bond was set at \$15,000.00.
10. A Confined by Civil Authorities memorandum, dated 9 January 1974 shows the applicant should be considered for separation under the provisions of Army Regulation (AR) 635-206 (Personnel Separations-Discharge-Misconduct (Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion)).
11. The applicant's commander-initiated action to discharge the applicant under the provisions of AR 635-206 on 25 April 1974.

12. A Telephone or Verbal Conversation Record, dated 25 July 1974 shows the court clerk stated as of 25 July 1974 appeal had been made by the applicant pertaining to his conviction.

13. On 30 July 1974, action was requested of the commander for approval to discharge the applicant because of conviction by a civil court. On 2 April 1974, the applicant appeared in the Sangamon Circuit Court and entered a plea of guilty to the charge of Burglary and was sentenced to an indeterminate number of years with a minimum of not less than two years nor more than six years. On 26 July 1974, he was represented by legal counsel before a board of officers and after careful consideration of all evidence presented, the board recommended that he be eliminated from the service and furnished an Undesirable Discharge Certificate.

14. The applicant was discharged on 23 August 1974. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-206, for Misconduct - conviction by civil court or adjudged a juvenile offender, with Separation Program Designator JKB and Reenlistment Code 3B. His characterization of service was UOTHC. He completed 7 months and 16 days of active service. He had 502 days of lost time.

15. By regulation, an individual discharged for conviction by civil court normally will be furnished an Undesirable Discharge Certificate.

16. The applicant provides:

- a. A copy of his DD Form 214 and service documents as discussed above.
- b. Articles (two) available for review and Speech.
- c. Various certificates for completion, participation, courses, and achievement.
- d. Diploma for Master of Arts in Christian Ministry, dated 14 May 2022.
- e. Character/support letters to the governor, parole board and this Board that attest to the applicant's good character, strong support and belief that the applicant is a good man. He is kind, thoughtful, impressive, respected by his peers, the staff at Statesville, and his university professors. He is a leader who carries himself with grace, warmth, and hospitality. He invests in his education, self-improvement, and rehabilitation. (All letters available for review).
- f. Department of Defense Guidance to Service Boards, 2018.

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

18. 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 under honorable conditions (general).

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 21 August 1972.
- The applicant was found guilty by a special court martial of being AWOL for 24 days in January 1973; assaulting a sergeant; and operating a vehicle while drunk. The applicant then was AWOL from 9 October 1973 to 7 November 1973, when he was dropped from the rolls. He was apprehended by civil authorities on 9 December 1973 for burglary/theft charges.
- The applicant was discharged on 23 August 1974 under the provisions of AR 635-206, for Misconduct - conviction by civil court or adjudged a juvenile offender, with Separation Program Designator JKB and Reenlistment Code 3B. His characterization of service was UOTHC. He completed 7 months and 16 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 was suffering from mental illness associated with his childhood experiences and addiction problems. The application included a Report of Medical Examination dated 11 August 1972, which did not indicate any mental health related symptoms. There was insufficient evidence that the applicant was diagnosed with any psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

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.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition

at the time of the misconduct. He did not provide any mental health related records, and there was no evidence of mental health history in JLV.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense 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 separated for conviction by a civil court for burglary in 1974. The Board noted the applicant's remorse for his conduct and his contention that he was suffering from a mental illness. Since the applicant's discharge, he maintained his sobriety, continued his education, and has become a leader as evidenced by his letters of support. The Board noted the medical reviewer's opinion; however, found the overwhelming accolades since his discharge and incarceration to be compelling and determined an under honorable conditions (General) was appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 23 August 1974 to show an under honorable conditions (General) characterization of service.

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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, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 635-206 (Personnel Separations-Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion)) this regulation, establishes policy and prescribes procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent entry into the service, conviction by civil court, and absence without leave or desertion. However, elimination action will not be taken in lieu of disciplinary action solely to spare an individual who may have committed serious misconduct the harsher penalties which may be imposed under the Uniform Code of Military Justice (UCMJ).
 - a. Section VI (Conviction by Civil Court), prescribes procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders initially convicted by civil authorities, or action taken against him which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year.
 - b. An individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case.
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 Service 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 (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 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 misconduct that led to the discharge.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//