

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230012548

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable and personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)
- Medical Records
- Pictures

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 indicates on his application he suffers from post-traumatic stress disorder (PTSD). He states, in effect, the correction should be made because in MOBA City Berlin, Germany in the spring of 1977 he was 110 miles behind the Iron Curtain. He was injured during a repelling exercise from a helicopter, falling 100 feet without breaking his fall. Sergeant [REDACTED] refused to let him go to sick call and placed him on detail. He was told by a Judge Advocate General attorney that he could apply for disability or be discharged by going absent without leave (AWOL). He would then report to Sharpe Army Depot in Sacramento. Being disabled in the 1970s would mean limited employment. He was a victim of PTSD and wanted the pain to end. He chose the latter of the two options, to go AWOL and be discharged. [REDACTED] of [REDACTED] was a witness the day of his repelling accident in the spring of 1977.
3. The applicant provides medical documents, 14 September 2023, which show his active problems as dermatitis, gastroesophageal reflux disease, history of hernia repair, history of smoking, hypertension, hypothyroidism, low back pain, numbness and tingling of skin, prediabetes, and venous varices. He also provides pictures of himself while in the Army.

4. The applicant's service record contains the following documents:

a. DA Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 11 May 1976.

b. DA Form 2-1 (Personnel Qualification Record), 25 January 1977, shows he was AWOL from 7 October 1977 to 15 November 1977.

c. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 1 March 1977, shows he accepted nonjudicial punishment, in the rank of private/E2, for possession of hashish and purchasing hashish. His punishment included reduction to the rank of private/E1 and restriction for 14 days. He did not appeal his punishment.

d. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence, 16 November 1977 shows he went AWOL on 7 October 1977, he was dropped from rolls on 7 November 1977, and he surrendered to military authorities on 16 November 1977.

e. DD Form 458 (Charge Sheet), 17 November 1977, shows he was charged with AWOL from on or about 7 October 1977 to on or about 16 November 1977.

f. SF Form 88 (Report of Medical Examination), 18 November 1977, does not indicate he had any medical or mental health issues. He states he was in good health. He was qualified for separation.

g. Counseling from his defense counsel, 21 November 1977, wherein the defense counsel explained his rights and the consequences of him requesting discharge in lieu of trial by court-martial.

h. Memorandum subject Request for Discharge for the Good of the Service, 21 November 1977, shows he consulted with legal counsel and voluntarily requested to be discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the UCMJ; of the possible effects of a discharge UOTHC if the request was approved; of the procedures and rights available to him, and of his right to submit statements in his own behalf. He stated statements in his own behalf were submitted with the request; however, they were not available for the Board's review.

i. Drug/Alcohol Non-dependency Statement, 22 November 1977 states he was not drug dependent.

j. His chain of command recommended approval of his request with an UOTHC discharge. On 2 December 1977, the appropriate approval authority approved his request for discharge. He was in the rank of private first class/E3 and was reduced to private/E1. His discharge was UOTHC.

k. On 29 December 1977, he was discharged accordingly. His DD Form 214 shows he had completed 1 year, 6 months, and 9 days of active duty service. He had 40 days of lost time. His character of service was UOTHC. His separation code and reenlistment code were not available for the Board's review. He was awarded the Armed Forces Occupational Medal, Expert Infantry Badge, and Expert Marksmanship Badge - Rifle.

5. Based on the applicant's assertion he was diagnosed with PTSD and the medical documents provided, the ARBA Medical Section provided a medical review for the Board's consideration.

#### 6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 29 December 1977 under other than honorable conditions discharge. The applicant has indicated on his DD 149 that PTSD is a condition related to his request. He states:

“This correction should be made because in MOBA city Berlin, Germany, in the spring of 1977, 110 miles behind the Iron Curtain, I was injured during a repelling exercise from a helicopter, falling 100 feet without breaking my fall. Sargent ■ refused sick call for me, placing me on detail.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 and supporting documents show he entered the regular Army on 11 May 1976 and was discharged under other than honorable conditions on 29 December 1977 under the provisions provided in chapter 10 of AR

635-200, Personnel Management – Enlisted Personnel (1 December 1975): Discharge for the Good of the Service – Conduct Triable by Court Martial.

d. A charge Sheet (DD Form 458) shows the applicant was charged with a period of absence without leave from 7 October 1977 thru 16 November 1977.

e. The applicant subsequently voluntarily requested discharge for the good of the Service under the provisions of Chapter 10, AR 635-200.

f. The applicant's separation Report of Medical Examination shows he was in good health, without noted medical history or conditions, and he was cleared for separation. On the second page, the applicant wrote "I am in good health" and then signed under his statement.

g. The Commanding General of the 7<sup>th</sup> Infantry Division and Fort Ord approved his request on 2 December 1977 with the directive his service be characterized as under other than honorable conditions.

h. No contemporaneous medical documentation was submitted with the application and his period of service predates the EMR. A civilian patient health summary dated 14 September 2023 shows the applicant has several chronic health issues.

i. JLV shows the applicant is not registered with the VA.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has duty-incurred PTSD.

(2) Did the condition exist or experience occur during military service? Applicant asserts the PTSD is due to his Service

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no probative evidence submitted, found in the EMR, other electronic records, or in JLV (to include VA endorsement), indicating the applicant has been diagnosed with PTSD or a behavioral health disorder of any kind.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation and the findings of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 for correction of the records of the individual concerned.

1/6/2025

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. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. 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.

c. 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, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JFS is used for discharge In Lieu of Trial by Court-Martial.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

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; traumatic brain injury (TBI); 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.

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 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.

8. 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.

9. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//