

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230012643

APPLICANT REQUESTS:

- in effect, reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 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 AC85-07273 on 6 November 1985.

2. The applicant states he was informed on 19 July 2023 that his discharge had been changed to honorable in 1982. He believes the correction has already been made and it should be reflected on his service record. He recalls an incident in 1972 when a grenade was thrown in the center of three of his sergeants and since they all looked terrified, he grabbed it and tossed it. Only one of his sergeants thought he was a good Soldier. Additionally, he was informed by a member of the Army staff that his discharge had been changed to honorable, the corrected records were on file, and were posted to public record in 1982. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 149 as a condition related to his request.

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

a. He enlisted in the Regular Army on 28 July 1972.

b. The applicant's DA Form 20 (Enlisted Qualification Record) lists his numerous periods of absence without leave (AWOL) while in Advanced Individual Training (AIT), as follows:

- 1 October 1972 to 9 October 1972 (9 days)
- 4 December 1972 to 10 December 1972 (7 days)
- 5 February 1973 to 26 February 1973 (22 days)
- 5 March 1973 (1 day)

c. On 21 August 1972, he accepted nonjudicial punishment for failure to obey a lawful order from a superior noncommissioned officer (NCO) on or about 19 August 1972.

d. On 18 October 1972, he accepted nonjudicial punishment for being AWOL from on or about 1 October 1972 to on or about 10 October 1972.

e. On 13 December 1972, he accepted nonjudicial punishment for being AWOL from on or about 4 December 1972 to on or about 11 December 1972.

f. On 4 June 1973, he was convicted by a special court-martial of two specifications of being AWOL from on or about 5 February 1973 to on or about 27 February 1973 and again on 5 March 1973; and one specification of wrongful use of marijuana. His sentence included forfeiture of \$125.00 pay per month for 2 months, reduction to private/E-1, and confinement at hard labor for 30 days.

g. On 19 June 1973, the convening authority approved the sentence and ordered it executed.

h. The available service record is void of the separation proceedings; however, ABCMR Docket Number AC85-07273, dated 6 November 1985, noted on 6 July 1973, the applicant's commander recommended him for discharge under other than honorable conditions because of excessive time lost and frequent incidents of a discreditable nature. The applicant was duly notified, and, on 6 July 1973, he waived appearance, waived a board, waived representation by counsel, and submitted a statement in writing. On 16 July 1973, the convening authority approved the request for discharge.

i. Special Orders Number 200, dated 19 July 1973, discharged the applicant under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, with an effective date of 20 July 1973.

j. On 20 July 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 6 months and 23 days of active service with 152 days of lost time. He was assigned separation number 246 and the narrative reason for separation listed as "For the Good of the Service," with reentry code 4.

4. On 15 November 1984, the applicant was notified the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing and found it proper and equitable, but determined the reason and authority should be changed. The ADRB changed the narrative reason for separation to reflect "Chapter 13, AR 635-200, SPN 28B, Unfitness-Frequent Involvement in Incidents of a Discreditable Nature with Civil or Military Authorities."

5. On 6 November 1985, the ABCMR rendered a decision in Docket Number AC85-07273. The Board determined the discharge proceedings were conducted in accordance with applicable laws and regulations, and the type of discharge appropriately characterized the applicant's service. The applicant presented no evidence in support of his request or evidence of error or injustice. For that reason, the Board denied the applicant's requested relief.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. 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 for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

8. By regulation (AR 635-200), an individual is subject to separation under the provisions of Chapter 13 for unfitness or unsuitability.

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. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he was experiencing PTSD 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: 1) The applicant enlisted in the Regular Army on 28 July 1972; 2) The applicant was found AWOL multiple times while attending AIT from October 1972-March 1973. He was also found to be using marijuana on one occasion; 3) The available service record is void of the separation proceedings. However, a previous ABCMR case, noted on 6 July 1973, the applicant's commander recommended him for discharge under other than honorable

conditions because of excessive time lost and frequent incidents of a discreditable nature; 4) The applicant was discharged on 20 July 1973, Chapter 10, For the Good of the Service. His service was characterized as UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted PTSD as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had 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 opine on possible mitigation as the result of mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing PTSD while on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL and use marijuana while on active service. It is possible these are two examples of avoidant behavior, which can be a sequela to PTSD, but this is not sufficient to establish a history of PTSD during active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of mental health condition or experience. However, the applicant contends he was experiencing PTSD that mitigates his misconduct, and per Liberal Consideration his contention is sufficient 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 relief was not warranted. The Board

carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency consideration for requesting upgrade of discharge characterization of service. Upon review of the applicants petition, available military records and medical review, the Board determined there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted, there is insufficient evidence surrounding the events which resulted in the applicant's discharge.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of multiple AWOL and drug use. The Board agreed there is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. The applicant's service record exhibits numerous instances of misconduct during his enlistment period for 6 months and 23 days of active service with 152 days of lost time. Further, the applicant provided no post service achievements or character letters of support for the Board to weigh 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. Therefore, the Board determined reversal of the previous Board decision is without merit and relief was denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AC85-07273 on 6 November 1985.



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. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current

enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is 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 which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

d. Chapter 13 of this regulation states an individual is subject to separation under the provisions of Chapter 13 for unfitness or unsuitability.

3. 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 post-traumatic stress disorder (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.

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 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, 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, 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 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.

6. 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//