

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012708

APPLICANT REQUESTS: correction of his DD Form 214 (Report of Separation from Active Duty) for the period ending 18 November 1975 to show an upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable. Additionally, he requests a copy his DD Form 214.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 he was discharged with a UOTHC discharge due to the hardship he faced from his family's dissolution which also resulted in post-traumatic stress disorder (PTSD). This discharge was not based on a crime or mal intent, it was solely based on the separation of his family where his son was taken from him and relocated, causing an emotional impact. At the time, he requested to be discharged and was granted a UOTHC discharge due to his hardship and was told it would be upgraded to honorable within six months from his date of discharge. Despite that statement, his discharge was never upgraded. Subsequently, he lost all discharge documents during a house fire in 1977, so he requests a copy of his DD Form 214 for his records. An upgrade to an honorable discharge would correct his injustice.
3. The applicant's request for a copy of his DD Form 214 will be addressed in the "Administrative Notes" section of this document without the need for Board action.
4. The applicant's service record is void of any disciplinary actions and any of his separation documents. However, the applicant's service record does reflect the following information:

a. A DD Form 4 (Enlistment Contract - Armed Forces of The United States) shows he enlisted in the Regular Army on 30 October 1974.

b. A DA Form 2-1 (Personnel Qualification Record) shows in:

- item 18 (Appointments and Reductions): he was reduced to the grade of private (E1) on 7 November 1975
- item 21 (Time Lost): 26 August 1975 to 5 October 1975 - he was absent without leave (AWOL) for 41 days
- item 35 (Record of Assignments)- he was dropped from rolls (DFR) and declared a deserter of 25 September 1975.

c. His DD Form 214 for the period ending on 18 November 1975 shows he was discharged with an UOTHC pursuant to Army Regulation 635-200, Chapter 10. He completed 1 year, 0 months, and 19 days of net active service this period. Lost time during this period was from 26 August 1975 to 5 October 1975.

d. A memorandum from the Headquarters, 4th Infantry Division, Mechanized, Fort Carson, CO, dated 18 November 1975, shows the applicant's records were transferred to the U. S. Army Enlisted Records Center in Fort Benjamin Harrison, IN.

e. In a memorandum dated 19 January 1976, from the U. S. Army Enlisted Records Center in Fort Benjamin Harrison, IN, it appears the applicant's records were never received. The Commander of the 4th Infantry Division, Fort Carson, CO, responded, however the service record does not reflect any additional documents.

f. A memorandum addressed to the applicant, undated, shows he was offered a separate document that included a narrative description of the regulatory or statutory authority for separation and the reenlistment code. This document further explained that this document could assist him in securing employment or acceptance for enrollment in a civilian institution after discharge. Additionally, if he elected to receive this document a copy would be provided to the State Adjutants General or U. S. Army Reserve Area Commanders and a copy would be attached to his DD Form 214 and filed permanently in his Official Military Personnel File. The applicant declined the document.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable. He contends PTSD mitigates his discharge.

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 30 October 1974.
- DA Form 2-1 (Personnel Qualification Record) shows in:
- item 18 (Appointments and Reductions): he was reduced to the grade of private (E1) on 7 November 1975
- item 21 (Time Lost): 26 August 1975 to 5 October 1975 - he was absent without leave (AWOL) for 41 days
- item 35 (Record of Assignments) - he was dropped from rolls (DFR) and declared a deserter on 25 September 1975
- His DD Form 214 for the period ending on 18 November 1975 shows he was discharged with an UOTHC pursuant to Army Regulation 635-200, Chapter 10. He received a separation code of "KFS" and a reentry code of "4" and was issued a DD Form 258A (Undesirable Discharge Certificate). He completed 1 year, 0 months, and 19 days of net active service this period. Lost time during this period was from 26 August 1975 to 5 October 1975.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was discharged with a UOTHC due to the hardship he faced from his family's dissolution which also resulted in post-traumatic stress disorder (PTSD). This discharge was not based on a crime or mal intent, it was solely based on the separation of my family where his son was taken from him and relocated, causing an emotional impact. At the time, he requested to be discharged and was granted a UOTHC discharge due to his hardship and was told it would be upgraded to honorable within six months from his date of discharge. Despite that statement, his discharge was never upgraded. Subsequently, he lost all discharge documents during a house fire in 1977, so he requests a copy of his DD Form 214 for his records. An upgrade to an honorable discharge would correct his injustice. Due to the period of service, no active-duty electronic medical records were available for review.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD. In addition, his indication that the dissolution of his family resulted in PTSD is not based on any medical documentation. Although the dissolution of his family may have created a hardship for the applicant, this does not meet diagnostic criteria for PTSD.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating his assertion. In addition, the applicant's rationale for his assertion of PTSD does not meet diagnostic criteria for the BH condition.

g. Per Liberal Consideration guidelines, his contention of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD 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 his misconduct not being mitigated by PTSD. 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. The Board concurred with the action described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the action addressed in Administrative Note(s) below, the Board determined 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 otherwise 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized a copy of his DD Form 214 (Report of Separation from Active Duty) for the period ending 18 November 1975. As a result, please provide the applicant with a copy of his DD Form 214.

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 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation AR 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.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code “1” applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met.
- RE code “2” Applies to persons not eligible for immediate reenlistment
- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted.
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "KFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10. RE code of “4” is the appropriate corresponding RE code for SPD code "KFS".

6. Army Regulation 635-5 (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. 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency

generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//