

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012823

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 30 August 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 2 November 1957

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, in effect, he wasn't treated right, and his discharge was not his fault. He quit school and enlisted at the age of 17 and was one of the little guys, due to his young age he believes he was picked on and he was unable to handle those types of situations. Since his discharge he has had a daughter and was married for over 60 years; however, his spouse passed away. He always kept a job and maintained a good work ethic. He drove trucks, logging over 100,000 miles, driving all over the country, and he was a part of the International Brotherhood and Teamsters Union. He is well known and respected in his community, where he is an outstanding citizen with no misconduct.

3. On his DD Form 149, the applicant notes mental health issues are related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation.

4. The applicant enlisted in the Regular Army on 30 June 1955, for a 3-year period, with parental consent. He was awarded the military occupational specialty of 111.10 (Light Weapons Infantry) and the highest rank he attained was private first class/E-3.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows by summary court-martial, the applicant was charged with going absent without leave (AWOL) from on or about 19 July 1956 and remaining AWOL until on or about 22 July 1956. He was found guilty and sentenced to forfeiture of \$25.00 for one month and restriction for one month. The sentence was adjudged on 27 July 1956 and approved on the same date.
6. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice on 2 July 1957 for being AWOL on or about 30 June 1957. His punishment was reduction to private 2/E-2.
7. By a summary court-martial adjudged on 19 July 1957, the applicant was charged with being drunk and disorderly in quarters on or about 1 July 1957; and failing to go to his prescribed place of duty, reveille formation, on or about 2 July 1957. He was found guilty and sentenced to forfeiture of \$50.00 and hard labor for one month. The sentence was approved on 20 July 1957.
8. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, his DD Form 214 shows he was discharged on 2 November 1957, under the provisions of Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), in the grade of E-1. His characterization of service was under other than honorable conditions with separation program number 382 [demonstrates behavior, participates in activities, or associations which tend to show that the individual is not reliable or trustworthy]. He was credited with 2 years and 4 months of net service this period with 3 days lost time.
9. Army Regulation 635-208, in effect at the time, provided procedures and guidance for eliminating enlisted personnel having undesirable habits and traits of character. An undesirable discharge was normally considered appropriate.
10. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.
11. 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 experienced Other Mental Health Issues that mitigates his misconduct. 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 30 June 1955. The highest rank he achieved was E-3, 2) the

applicant was found guilty by a Summary Court-Martial for being absent without leave (AWOL) on or about 19 July 1956 to on or about 22 July 1956, 3) the applicant received an Article 15 on 02 July 1957 for being AWOL on or about 30 June 1957, 4) the applicant was found guilty by a Summary Court-Martial of being drunk and disorderly in quarters on or about 01 July 1957 and failing to go to his place of duty on or about 02 July 1957, 5) the applicant's service record is void of the complete facts and circumstances surround his discharge. He was discharged on 02 November 1957 under the provisions of Army Regulation 635-208) (Personnel Separations-Discharge-Undesirable habits and Traits of Character), with a separation program number of 382 [demonstrates behavior, participates in activities, or associations which tend to show that the individual is not reliable or trustworthy].

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No military or civilian medical records were available for review. A review of JLV was void of medical information aside from one note in 2008 for physical health reasons. Of note, the applicant's UOTHC discharge renders him ineligible for VA services. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation. However, he contends his misconduct was related to Other Mental Health Issues, and per liberal guidance his assertion is sufficient to warrant the Board's consideration.

d. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant

during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. Furthermore, his military service records available for review do not provide sufficient evidence that the applicant had an experience or condition that would have contributed to behavioral changes consistent with a BH condition. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support and upgrade based on BH medical mitigation.

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 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official finding, in absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.
2. However, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board found that the discharge characterization for the misconduct to weigh a clemency determination. The Board, under liberal consideration carefully reviewed his post service achievements and the almost 70 years of how the applicant turned his life around since his discharge Based on a preponderance of evidence, the Board determined that the character of service the applicant received was harsh and found an upgrade to a general under honorable conditions was warranted. Therefore, the Board granted partial relief.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 2 November 1957 to show his characterization of service as under honorable (general) conditions.
2. The Board further determined 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 an upgrade of the applicant's characterization of service from under other than honorable conditions to honorable.

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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, 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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.

4. Army Regulation 635-208, in effect at the time of the applicant's separation from active duty, provided procedures and guidance for eliminating enlisted personnel having undesirable habits and traits of character. This regulation provides, in pertinent part, that a recommendation for discharge because of undesirability will be made in the case of an enlisted person who gives evidence of habits and traits of character manifested by antisocial or amoral trend, chronic alcoholism, criminalism, drug addiction, pathological lying, or misconduct. It also provides that Soldiers discharged because of undesirable habits or traits of character will be furnished an Undesirable Discharge Certificate (i.e. an under other than honorable discharge).

5. 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 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.

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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//