

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230012896

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service, and appearance before the Board in person or via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Certificate of Death (mother), dated [REDACTED]
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 16 April 1985

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, prior to being reported absent without leave (AWOL), he was experiencing a high level of stress. He was a victim of infidelity, and his mother was diagnosed with terminal cancer. The news from home had an ill effect on his mental capacity. He began to consume alcohol and experiment with marijuana, which had a negative effect on his ability to perform his duties. He was abandoned by his spouse, who took their children and returned [REDACTED], leaving him to bear the burden alone. He came in on the buddy system, and was separated from his buddy after basic combat training. It was the buddy system that encouraged him to enlist. He notes post-traumatic stress disorder (PTSD) as a condition related to his request.
3. The applicant enlisted in the Regular Army on 19 August 1981, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 13F (Fire Support Specialist). The highest rank he attained was specialist fourth class/E-4.

4. Three DA Forms 4187 (Personnel Action) show the following changes in his duty status:

- Present for Duty to AWOL, on 16 December 1983
- AWOL to Dropped from Rolls (DFR), on 15 January 1984
- DFR to Returned to Military Control, apprehended by civil authorities, on 2 March 1985

5. Court-martial charges were preferred against the applicant on 5 March 1985 for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458, shows he was charged with being AWOL, with the intent to remain away permanently, on or about 16 December 1983, and did remain absent in desertion until he was apprehended on or about 2 March 1985.

6. The applicant consulted with legal counsel on 8 March 1985.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

7. On 19 March 1985, the applicant's immediate commander recommended approval of the request for discharge for the good of the service, with the issuance of a DD Form 794A (UOTHC Discharge Certificate).

8. The separation authority approved the recommended discharge on 26 March 1985 and further directed the issuance a UOTHC Discharge Certificate and reduction to private/E-1.

9. The applicant was discharged on 16 April 1985, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial. His DD Form 214 confirms a UOTHC character of service, with separation code KFS and reenlistment code RE-3B. He was credited with 2 years, 5 months, and 12 days of net active service, with lost time from 16 December 1983 to 1 March 1985. He was awarded or authorized the following:

- Army Service Ribbon
- Army Achievement Medal
- Expert Marksmanship Qualification Badge with Rifle bar (M160) and Grenade bar

10. The applicant provides a Certificate of Death for [REDACTED] presumably his mother, which shows her date of death as [REDACTED]. In his additional self-authored statement, he states his mother passed away the day he was ordered to fly to Frankfurt, Germany. He does not have a copy of the orders he received, but he was preparing to leave to catch his flight when he received the news. The timing of the event was the tipping point for his delinquent behavior.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service. 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 19 August 1981.
- Court-martial charges were preferred against the applicant on 5 March 1985 for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458, shows he was charged with being AWOL, with the intent to remain away permanently, on or about 16 December 1983, and did remain absent in desertion until he was apprehended on or about 2 March 1985.
- The applicant consulted with legal counsel on 8 March 1985. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged

his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

- The applicant was discharged on 16 April 1985, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial. His DD Form 214 confirms a UOTHC character of service, with separation code KFS and reenlistment code RE-3B. He was credited with 2 years, 5 months, and 12 days of net active service, with lost time from 16 December 1983 to 1 March 1985.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "prior to being reported absent without leave (AWOL), he was experiencing a high level of stress. He was a victim of infidelity, and his mother was diagnosed with terminal cancer. The news from home had an ill effect on his mental capacity. He began to consume alcohol and experiment with marijuana, which had a negative effect on his ability to perform his duties. He was abandoned by his spouse, who took their children and returned [REDACTED], leaving him to bear the burden alone. He came in on the buddy system and was separated from his "buddy" after basic combat training. It was the buddy system that encouraged him to enlist". Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy documentation showing any mental health issues during his time in service. The applicant provides a Certificate of Death, presumably of his mother, showing the date of death as [REDACTED].

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. 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. However, it is recommended the Board consider granting the applicant relief on the grounds of clemency.

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 PTSD or any other behavioral health condition during military service or after his 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 any other mental health condition. However, the applicant reports that at the time of his misconduct, he was abandoned by his spouse and his mother was diagnosed with a terminal illness, and eventually died per the available death certificate. And while these circumstances do not meet criteria for PTSD, they certainly would cause overwhelming stress and significant grief which could lead to poor decision-making. Given this observation, as well as the fact the applicant has been living with this UOTH discharge for almost 40 years, it is recommended the Board consider granting the applicant relief on the grounds of clemency.

g. Per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

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 length of the AWOL offense leading to the applicant's separation, the fact the AWOL ended as a result of apprehension by authorities, and the lack of mitigation found by 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.

1/7/2025

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, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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. AR 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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

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 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, 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//