

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012957

APPLICANT REQUESTS: presumably an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to a more favorable character of service.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 27 July 2023
- DD Form 2823 (Sworn Statement), 27 July 2023
- Letter to the Board, date unknown

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, after his reenlistment, when in Germany during a stimulated combat training exercise, the emotions got tense as his unit was divided into two groups friendly and adversary. He approached a 5-ton vehicle, where a young Soldier hit him on the face, then this Soldier jumped off the vehicle and continued to hit his face until he became unconscious. He was flown out by helicopter and hospitalized for several days. When released from the hospital he returned to his unit, and he was not the same.

a. He became disoriented, confused, paranoid, he was unable to eat or sleep properly, he had memory-loss and issues, and his brain was damaged. It was probably good that he ended up being kicked out of the Army. He references the medical documentation in his Army health records.

b. After his discharge, he suffered many years of homelessness and his symptoms from the attack returned. He was unaware he could request a discharge upgrade until he heard Congress passed a law to help Soldiers receive upgrades. He has put his faith in Jesus Christ and is requesting a discharge upgrade.

c. The applicant notes on his DD Form 149, traumatic brain injury (TBI) is related to his request.

3. The applicant enlisted in the Regular Army on 30 May 1979, for a 3-year period. He conducted an immediate reenlistment on 1 December 1981 for an additional 4-year period. He was awarded the military occupational specialty of 13B (Cannon Crewman) and the highest rank he attained was specialist fourth class/E-4.

4. Court-martial charges were preferred against the applicant on 7 November 1983, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with the below specifications. He was referred for trial to a summary court-martial.

- One specification of being disrespectful in language toward his superior noncommissioned officer on or about 7 October 1983
- One specification of being drunk in camp on or about 7 October 1983
- One specification of wrongfully communicating a threat to his superior noncommissioned officer on or about 7 October 1983.

5. A DA Forms 4187 (Personnel Action) show the applicant's duty status was changed as follows:

- from present for duty (PDY) to absent without leave (AWOL) effective on 10 February 1984
- from AWOL to PDY effective on 13 February 1984

6. The applicant's chain of command recommended trial by special court-martial empowered to adjudge a bad conduct discharge.

7. Court-martial charges were preferred against the applicant on 14 March 1984, for violations of the UCMJ. The relevant DD Form 458 shows he was charged with one specification of being AWOL from on or about 10 February 1984 and remaining AWOL until on or about 13 February 1984.

8. The applicant consulted with legal counsel on 16 March 1984 and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit statements in his own behalf.

9. On 22 March 1984, the separation authority approved the applicant's request for discharge for the good of the service and further directed the applicant receive a discharge UOTHC, and that he be reduced to the lowest enlisted grade of E-1.

10. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 2 April 1984, under the provisions of AR 635-200, Chapter 10, for the good of the service, in the grade of E-1. He received an UOTHC characterization of service, a separation code of JFS, and reenlistment code of RE-4. He was credited with 4 years and 10 months of net active service with time lost from 10 February 1984 to 12 February 1984. He was awarded or authorized the Army Service Ribbon and Army Good Conduct Medal.

11. An analyst from ABCMR Case Management Division, contacted the applicant on 6 December 2023 and requested additional documentation in support of the applicant's claim of TBI, to this day no additional medical documentation was received.

12. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

13. 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.

14. 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 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 2 April 1984 discharge characterized as under other than honorable conditions. On his DD form 149, he had indicated that TBI (traumatic brain injury) is a condition related to his requests. He claims to have been assaulted and knocked unconscious by a fellow soldier.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 30 May 1979 and was discharged under other than honorable conditions on 2 April 1984 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 May 1982): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty pay area. The DD 214 shows one period of time lost under 10 USC § 972, from 10-12 February 1984.

d. A 3 November 1983 Charge Sheet (DD Form 458) shows the applicant was charged with disrespectful in language toward his superior noncommissioned officer, being drunk on post, and wrongfully communicating a threat to a first sergeant. A 7 March 1984 DD 4548 shows he was charged with a period of absence without leave from 10-13 February 1984.

e. On 16 March 1984, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200.

f. His request for discharge was approved by the Commanding General of the United States Army Air Defense Center and Fort Bliss on 22 March 1984.

g. No medical documentation was submitted with the application. His period of service predates the EMR and JLV shows the applicant is not registered with the VA

h. It is the opinion of the ARBA medical advisor that a discharge upgrade based on a mental health condition is not warranted.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he had a TBI.

(2) Did the condition exist or experience occur during military service? Applicant asserts the TBI was incurred while in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No: The applicant has submitted no medical documentation indicating a diagnosis of TBI or other mental health condition(s), and none was found in a review of the supporting documentation or the electronic records. Based on review of the medical records, it is the opinion of the ARBA medical advisor that there is insufficient evidence the applicant incurred a TBI during military service which would mitigate his misconduct.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant was charged with commission of an offense (being disrespectful in language toward his superior NCO, being drunk in camp, wrongfully communicating a threat to his superior NCO, and AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding that the applicant has submitted no medical documentation indicating a diagnosis of TBI or other mental health condition(s), and none was found in a review of the supporting documentation or the electronic records, and that there is insufficient evidence the applicant incurred a TBI during military service which would mitigate his misconduct. Also, the applicant provided evidence of post-service achievements or letters of reference in support of a clemency determination; however, the Board determined such letters of support did not outweigh his serious misconduct. 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.

c. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from

first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            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 amending his DD Form 214 for the period ending on 2 April 1984 to show:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- IMMEDIATE REENLISTMENT THIS PERIOD FROM 790530 TO 811130
- CONTINUOUS HONORABLE SERVICE FROM 790530 UNTIL 811130

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 upgrading the characterization of his discharge.

█

---

█ █

█

█

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 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.

3. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(13) of the regulation currently in effect states that item 13 lists awards and decorations for all periods of service in the priority sequence specified in Army Regulation 600-8-22 (Military Awards). Each entry will be verified by the Soldier's records.

c. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

5. AR 635-200, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member 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 for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is-under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the service.



6. 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 UOTHC 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.

7. 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 to 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.

8. 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//