

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012971

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment Contract-Armed Forces of the United States)
- DD Form 214 (Report of Separation from Active Duty) for the period ending 23 April 1975
- Two Character Reference Letters

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:

a. He served honorably excluding the times he had family issues with his ex-wife beyond his control. His ex-wife was into drugs, alcohol, and infidelity. His ex-wife gave him an ultimatum, either her or the Army. He chose to stay in the Army. However, the mental damage had already been done to him.

b. He remarried and has been with his wife for over 32 years. He has served as head church deacon and chairman of the deacon board. His wife is a pastor at another church, and he has three sons. He does not know anyone that has never made a mistake in life, and he hopes and prays that his request is honored. The applicant's application reflects post-traumatic stress disorder (PTSD) as an issue/condition related to his request.

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

a. He enlisted in the Regular Army on 2 October 1972 at the age [REDACTED] years old with the consent of his aunt.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 5 (Overseas Service): service in Hawaii from 25 March 1973 to 22 April 1975.

c. His DA Form 2-1 also shows in item 18 (Appointments and Reductions):

- private (PVT)/E-1: 14 August 1972
- private (PV2)/E-2: 14 December 1972
- private first class (PFC)/E-3: 10 September 1973
- specialist (SPC)/E-4: 5 February 1977
- PV2/E-2: 11 July 1974
- PV2/E-2: 31 July 1974

d. The applicant accepted nonjudicial punishment on 24 June 1976 for having in his possession one (1) gram of marijuana, a controlled substance on 21 June 1974.

e. On 16 December 1974, court-martial charges were preferred on the applicant for:

(1) Charge I: Violation of the Uniform Code of Military Justice (UCMJ), Article 92 (Failure to obey a lawful order) one specification of on or about 18 November 1974 have in his possession, one (1) ounce, more or less, of marijuana, a controlled substance.

(2) Charge II: Violation of the UCMJ, Article 121 (Larceny and Wrongful Appropriation) one specification of on or about 18 November 1974, steal a M1911A1 pistol, caliber .45 automatic of a value of about \$57.00, the property of the United States.

(3) Charge III: Violation of the UCMJ, Article 86 (Absent without leave) one specification of on or about 5 December 1974, fail to go at the time prescribed to his appointed place of duty, morning physical training formation.

(4) Charge IV: Violation of the UCMJ, Article 91 (Absent without leave) one specification of on or about 5 December 1974, after receiving a lawful order from a superior noncommissioned officer, to go downstairs and wait for him, willfully disobey the same.

f. On 18 March 1975, court-martial charges were preferred on the applicant for Violation of the UCMJ, Article 86 (Absent without leave) one specification of being absent without leave from on or about 21 January 1975 to on or about 11 February 1975.

g. On 24 March 1975, after consulting with legal counsel, the applicant requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because charges were preferred against him, each of which authorizes the imposition of a bad conduct or dishonorable discharge.

(1) He acknowledged:

- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person
- he had been advised of the implications that are attached to it
- by submitting this request, he acknowledged he was guilty of the charge against him or of a lesser included offense therein contain which also authorizes the imposition of a bad conduct or dishonorable discharge.
- under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service
- if his request for discharge is accepted, he may be discharged under conditions other than honorable
- he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law

(2) He provided a written statement on 27 March 1975 for consideration, which states he is 19 years old. He is married with no children. He feels the trouble he is in stems from his youth and the inability to realize the consequences of his actions and how they will affect his entire life and future of his family. He requested a discharge out of fear of receiving a court-martial conviction. He feels he would have been acquitted of the more serious charges, but they would still give him a federal conviction. He knows the conviction would be worse than the discharge. Before the charges he only had one Article 15 and no courts-martial or civilian convictions. It is unjust to label him as undesirable after thirty months of service. He would like the opportunity to return to civilian life with a discharge that will allow him to become a contributing member of society.

h. The applicant's immediate and intermediate commander also recommended approval of the applicant's request for discharge and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

i. The separation authority approved the applicant's request for discharge on 11 April 1975 and directed the issuance of an Undesirable Discharge Certificate.

4. Accordingly, the applicant was discharged on 23 April 1975, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. His DD Form 214 shows his service was characterized as under other than honorable conditions. He was credited with 2 years, 5 months, and 25 days of active service, with 27 days of lost time.

5. On 7 December 2023, a representative for the Army Review Boards Agency (ARBA) requested medical documentation pertaining to the applicant's PTSD. The applicant did not respond.

6. The applicant provides two character reference letters that attest to him being a family and church man who does extraordinary things for not only his church, but for the community as well. He has been a church member for over 34 years. He joined the military at an early age to support his country. He chose the Army over his family which caused his tremendous challenges. He has raised three exceptional sons who are an asset to the community, a strong example of living right and helping others. He deserves to have his discharge upgraded.

7. By regulation, a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. A discharge under other than honorable conditions normally is appropriate for a Soldier 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 Soldier's overall record during the current enlistment.

8. The Board should consider the applicant's statement and provided evidence in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his character of service from under other than honorable conditions (UOTHC). He selected on his application PTSD and OMH as conditions related to his request.

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 2 October 1972.
- The applicant accepted nonjudicial punishment on 24 June 1976 for having in his possession one (1) gram of marijuana, a controlled substance on 21 June 1974.
- On 16 December 1974, court-martial charges were preferred against the applicant for:

- (1) Charge I: Violation of the Uniform Code of Military Justice (UCMJ), Article 92 (Failure to obey a lawful order) one specification of on or about 18 November 1974 having in his possession, one (1) ounce, more or less, of marijuana a controlled substance.
- (2) Charge II: Violation of the UCMJ, Article 121 (Larceny and Wrongful Appropriation) one specification of on or about 18 November 1974, stealing a M1911A1 pistol, caliber .45 automatic of a value of about \$57.00, the property of the United States.
- (3) Charge III: Violation of the UCMJ, Article 86 (Absent without leave) one specification of on or about 5 December 1974, failing to go at the time prescribed to his appointed place of duty, morning physical training formation.
- (4) Charge IV: Violation of the UCMJ, Article 91 (Absent without leave) one specification of on or about 5 December 1974, after receiving a lawful order from a superior noncommissioned officer, to go downstairs and wait for him, willfully disobeying the same.
- On 18 March 1975, court-martial charges were preferred on the applicant for Violation of the UCMJ, Article 86 (Absent without leave) one specification of being absent without leave from, on or about 21 January 1975 to on or about 11 February 1975.
- On 24 March 1975, after consulting with legal counsel, the applicant requested discharge for the good of the service under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He understood that he may request discharge for the good of the service because charges were preferred against him, each of which authorizes the imposition of a bad conduct or dishonorable discharge.
- Applicant was discharged on 23 April 1975, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. His DD Form 214 shows his service was characterized as under other than honorable conditions, with separation program number KFS and reenlistment code RE-3B.
- A letter from ARBA, dated 13 January 2005, responds to the applicant's 15 March 2004 request for reconsideration of an upgrade and references that his case was also considered on 27 May 1987. The applicant's requests for an upgrade were denied.

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 served honorably excluding the times he had family issues with his ex-wife beyond his control. His ex-wife was into drugs, alcohol, and infidelity. His ex-wife gave him an ultimatum, either her or the Army. He chose to stay in the Army. However, the mental damage had already been done to him. He remarried and has been with his wife for over 32 years. He has served as head church deacon and chairman of the deacon board. His wife is a pastor at another church, and

he has three sons. He does not know anyone that has never made a mistake in life, and he hopes and prays that his request is honored.” 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 and/or OMH. In addition, on 7 December 2023, the Case Management Division of ARBA informed the applicant that he must provide medical documentation in support of his contention of PTSD and OMH; no response was received. The applicant references his ex-wife’s substance use and infidelity as the basis for his contention of PTSD and OMH, however, he provides no medical documentation. Although the applicant’s familial stressors may have created a hardship for the applicant, they do 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 and OMH.

(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 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 PTSD or any other mental health condition. And while the applicant self-asserted PTSD and OMH, 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, supporting documents, 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 Board found the letters of support the applicant provided insufficient to support clemency. 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.

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.

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.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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.
  - c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier 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 Soldier's overall record during the current enlistment.
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//