

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230013271

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) discharge to either an under honorable conditions (general) discharge or an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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, in effect, he truly cannot breathe anymore. He wishes he could have reenlisted. He may have been better off letting the Army know he had hereditary mental health issues. He thought he could function without medication. Currently, both of his legs are broken, or he would be trying to reenlist and not fail again at being a Soldier. He has felt this pain daily for over 12 years and is truly sorry. He has provided many hours, days, and weeks of community services. Please allow him to hold his head up around his family members, continue his education, and improve his quality of life. If it is a matter of money, he will need to set up a payment arrangement.
3. The applicant enlisted in the Regular Army on 20 June 2006 for a period of 6 years in the rank/grade of private (PV2)/E-2. Upon completion of initial entry training, he was awarded military occupational specialty 13D (Field Artillery Automation Specialist) and assigned to a unit at Fort Bragg, NC.
4. The applicant's duty status was changed as follows:
 - from Present for Duty (PDY) to Absent Without Leave (AWOL) on 13 February 2007

- from AWOL to Dropped from Rolls (DFR) as a deserter on 15 March 2007
- from DFR to PDY following his surrender to military authorities on 23 April 2007

5. The applicant underwent a command-directed mental status evaluation on 7 May 2007. It was determined that he had the capacity to understand and participate in the proceedings. He was mentally responsible for his behavior, could distinguish right from wrong, and possessed sufficient mental capacity. There was evidence of an emotional or mental disorder of psychiatric significance that was not enough to warrant disposition through medical channels

6. The applicant underwent a separation medical examination and was found to be qualified for administrative separation.

7. On 20 June 2007, the applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 13 February 2007, without authority and with intent to remain away therefrom permanently; absenting himself from his unit and remaining so absent until on or about 23 April 2007. His punishment included: reduction to private (PV1)/E-1; forfeiture of \$650.00 pay per month for 2 months; extra duty for 45 days; and restriction for 45 days.

8. On 26 June 2007, the applicant's immediate commander informed the applicant that he was initiating action to separate him under the provisions of provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c due to misconduct – commission of a serious offense. The specific reason for this action was the applicant's period of AWOL from 13 February 2007 to 23 April 2007. The applicant's commander informed him he was recommending that he receive a discharge UOTHC.

9. The applicant acknowledged receipt of the notification; consulted with counsel and rendered his election of rights. The applicant waived his rights to consideration of his case by an administrative separation board, representation by counsel, and to submit statements in his own behalf.

10. The applicant's immediate commander formally recommended approval of his separation and issuance of a discharge UOTHC; the intermediate commander concurred.

11. On 28 June 2007, the separation authority approved the recommended separation and directed the applicant's service be characterized as UOTHC.

12. Orders and the applicant's DD Form 214 (Certificate or Release or Discharge from Active Duty) show he was discharged on 13 July 2007 in the rank/grade of PV1/E-1, under the provisions of Army Regulation 635-200, paragraph 14-12c, due to Misconduct

(Serious Offense). His service was characterized as UOTHC. He was credited with completion of 10 months and 13 days of net active service. He had time lost due to AWOL from 13 February 2007 to 22 April 2007. He did not complete his first full term of service.

13. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) 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 20 June 2006.
- On 20 June 2007, the applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for on or about 13 February 2007, without authority and with intent to remain away therefrom permanently; absenting himself from his unit and remaining so absent until on or about 23 April 2007.
- On 26 June 2007, the applicant's immediate commander informed the applicant that he was initiating action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c due to misconduct – commission of a serious offense. The specific reason for this action was the applicant's period of AWOL from 13 February 2007 to 23 April 2007. The applicant's commander informed him he was recommending that he receive a discharge UOTHC.
- Applicant was discharged on 13 July 2007 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10, paragraph 14-12c, due to Misconduct. He was assigned separation code JKQ and reenlistment code 3.

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 he truly cannot breathe anymore. He wishes he could have reenlisted. He may have been better off letting the Army know he had hereditary mental health issues. He thought he could function without medication. Currently, both of his legs are broken, or he would be trying to reenlist and not fail again at being a Soldier. He has felt this pain daily for over 12 years and is truly sorry. He has provided many hours, days, and weeks of community services. Please allow him to hold his head around his family members, continue his education, and improve his quality of life. If it is a matter of money, he will need to set up a payment arrangement. The

applicant further lists several non-service-related medical conditions. The applicant's active-duty electronic medical record available for review indicates following his AWOL, upon learning that he had pending legal issues and would be chaptered out of the military he exhibited suicidal behavior with intent and plan. The applicant was psychiatrically hospitalized on 1 May 2007; his alcohol level was .265 on admission. During this psychiatric admission he was diagnosed with Adjustment Disorder with Disturbance of Emotions and Conduct, Unspecified Psychoactive Substance Abuse, and Alcohol Dependence (Alcoholism). The applicant reported a history of childhood trauma and residential placement due to parental abuse/neglect but was not found to meet criteria for any psychiatric diagnosis or condition. The applicant was discharged on 4 May 2007 and was not provided with medication but was referred for therapy, psychiatry, and ASAP. He was provided with three supportive therapy session and an ASAP assessment. The applicant underwent a command-directed mental status evaluation on 7 May 2007. It was determined that he had the capacity to understand and participate in the proceedings. He was mentally responsible for his behavior, could distinguish right from wrong, and possessed sufficient mental capacity. There was no evidence of an emotional or mental disorder that warranted disposition through medical channels.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic behavioral health medical records were available for review, and he did not submit any medical documentation post-military service substantiating his assertion of "hereditary mental health issues".

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, "hereditary mental health issues".

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions And Conduct, Unspecified Psychoactive Substance Abuse, and Alcohol Dependence (Alcoholism) during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. 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. The applicant was diagnosed with Adjustment Disorder with Disturbance of Emotions And Conduct, Unspecified Psychoactive Substance Abuse, and Alcohol Dependence (Alcoholism)

during military service. However, his Adjustment Disorder appeared to have occurred as a reaction to feeling overwhelmed by the stressor of potentially being separated from military service. The applicant's BH condition does not provide mitigation since Adjustment Disorder is a transient reaction to stress and does not affect one's ability to distinguish right from wrong and act in accordance with the right. In addition, his substance and alcohol abuse, in the absence of a psychiatric condition, do not provide mitigation for his misconduct.

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 behavioral health 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 a behavioral health condition. 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.

12/9/2024

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (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. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Paragraph 3-7b 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 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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; TBI; 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.

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//