

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230013384

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded. Additionally, he requests a personal appearance before the Board.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for the Correction of Military Record)
- Character Letters (four)

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 his military service has been characterized improperly hindering his professional career and family name. The correction should be made to reflect the service he provided to his country; to restore the benefits he forfeited and to restore honor to his family name, as every generation of his family has served our country. He lists post-traumatic stress disorder (PTSD), and other mental health as related to his request.
3. The applicant enlisted in the Regular Army on 21 September 1999 for 4 years. His military occupational specialty was 14S (Avenger Crewmember).
4. The applicant was absent without leave (AWOL) on 6 July 2001, until he was reported as present for duty on 26 August 2001.
5. The applicant was counseled by his commander on 27 August 2001 for being AWOL.

6. The applicant had a positive urinalysis for (tetrahydrocannabinol (THC)), on 28 August 2001.
7. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 September 2001, for being AWOL from on or about 6 July 2001 until on or about 26 August 2001. His punishment consisted of forfeiture of \$525.00 pay for two months (suspended), reduction to private/E-1, restriction, and extra duty.
8. On 17 September 2001, the applicant's commander was notified of his positive urinalysis test, the commander was advised to refer the applicant to the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for evaluation and/or enrollment.
9. The applicant was counseled by his commander on 18 September 2001 for the positive urinalysis result.
10. DA Form 8003 (ADAPCP Enrollment), dated 18 September 2001 shows the applicant was to depart the installation within 90 days under the provisions of Army Regulation (AR) 635-200(Active-Duty Enlisted Administrative Separations), Chapter 14, for misconduct. He was command referred for alcohol and/or drug education.
11. The Report of Mental Status Evaluation, dated 25 September 2001 shows he had the mental capacity to understand and participate in the proceedings, he was mentally responsible, met retention requirements and was able to distinguish right from wrong and adhere to the right. He was cleared for any administrative action deemed appropriate by command.
12. The punishment of forfeiture of \$525.00 pay per month for two months was vacated on 3 October 2001, based on the applicant's wrongful use of marijuana between on or about 28 July 2001 and on or about 28 August 2001.
13. The applicant's immediate commander recommended his discharge on 8 October 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for patterns of misconduct. The specific reasons were for AWOL and wrongful use of marijuana.
14. The applicant's immediate commander notified him of her intent to initiate action to separate him under the provisions of AR 635-200, Chapter 14-12c, for misconduct-commission of a serious offense. The applicant had wrongfully used marijuana and was AWOL. His commander recommended he receive an UOTHC discharge.

15. The applicant consulted with legal counsel on 25 October 2001 and was advised of the basis for his separation and the procedures and rights that were available to him. He requested consideration of his case by a board of officers, and he requested personal appearance before an administrative separation board. He elected not to submit statements in his own behalf.

16. The applicant's immediate commander formally recommended the applicant be separated from the Army prior to the expiration of his term of service. His chain of command recommended a UOTHC discharge.

17. On 1 November 2001 a board of officers was to be convened. After discussion with counsel on 19 November 2001 the applicant freely chose to waive his right to an administrative separation board contingent upon receiving an under honorable conditions (general) discharge.

18. A statement, dated 19 November 2001 shows the applicant requested an under honorable conditions (general) discharge. He knew his actions were unprofessional, degradable, and would not be tolerated in the Army. He just needed to be given another chance.

19. The applicant's request for a conditional waiver was disapproved by the approval authority on 6 December 2001.

20. The applicant was counseled on multiple occasions between 29 October and 14 December 2001 for failure to repair, failure to obey an order (twice), wakeup call, ADAPCP failure, failure to return to duty and refraining from the use of alcohol.

21. The applicant was notified to appear before an Administrative Separation Board on 9 January 2002. The hearing would convene on 30 January 2002.

22. DA Form 1574 (Report of Proceedings by Investigation Officer/Board of Officer) shows the board commenced on 12 February 2002. The findings show the applicant is undesirable for retention in military service because he wrongfully used marijuana and was AWOL. His rehabilitation is not deemed possible. The board recommended the applicant be discharged under the provisions of AR 635-200, paragraph 14-12c, for Commission of a Serious Offense, and that his service be characterized as UOTHC. The applicant acknowledged receipt of the administrative separation proceedings on 26 February 2002.

23. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14, on 10 April 2002 and directed that the applicant be issued a UOTHC discharge.

24. The applicant was discharged on 15 April 2002, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c (2), for misconduct with Separation Code JKK and Reentry Code 4. His service was characterized as UOTHC. He completed 2 years, 5 months, and 4 days of net active service this period. He lost time from 6 July 2001 to 25 August 2001. His awards include the Army Service Ribbon.

25. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge UOTHC is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

26. The applicant provides:

a. A character letter from T.D.S., which states the applicant has excellent character, and he has seen the applicant struggle with anxiety and depression. As a mentor she recommended seeking professional treatment for his mental health issue, but the applicant was very private fearing opening up to a stranger concerning his most intimate feelings. Being stationed in other States and Countries contributed to his heightened depression and self-medicating. After his separation he went several years being unemployed and homeless. He is a born-again Christian and is rebuilding his life. He matured emotionally, spiritually, and professional exponentially over the next several years. He got married and started a healthy and thriving family.

b. Additional character letters attest to the applicant being a good friend, incredible human being, consistently kind and generous with others and has a strong sense of duty which he applies at his workplace and with family. He is mature, selfless, and very ambitious, driven and professionally motivated. He is selfless. He is friendly but direct and honest and has earned him the trust and respect of his staff of 32 employees, and colleagues. He is naturally charming and charismatic with a warm personality that draws people in.

27. On 20 August 2010, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason for his discharge.

28. On 25 April 2024, a staff member an agency staff member requested the applicant provide medical documents that support his issue of PTSD. As of 3 June 2024, no response was provided.

29. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

30. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends PTSD and OMH 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 21 September 1999.
- The applicant was absent without leave (AWOL) on 6 July 2001, until he was reported as present for duty on 26 August 2001.
- The applicant had a positive urinalysis for tetrahydrocannabinol (THC), on 28 August 2001.
- The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 September 2001, for being AWOL from on or about 6 July 2001 until on or about 26 August 2001. His punishment consisted of forfeiture of \$525.00 pay for two months (suspended), reduction to private/E-1, restriction, and extra duty.
- DA Form 8003 (ADAPCP Enrollment), dated 18 September 2001 shows the applicant was to depart the installation within 90 days under the provisions of Army Regulation (AR) 635-200(Active-Duty Enlisted Administrative Separations), Chapter 14, for misconduct. He was command referred for alcohol and/or drug education.
- The applicant's immediate commander recommended his discharge on 8 October 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for patterns of misconduct. The specific reasons were for AWOL and wrongful use of marijuana.
- The applicant consulted with legal counsel on 25 October 2001 and was advised of the basis for his separation and the procedures and rights that were available to him. He requested consideration of his case by a board of officers, and he requested personal appearance before an administrative separation board. He elected not to submit statements in his own behalf.
- The applicant was counseled on multiple occasions between 29 October and 14 December 2001 for failure to repair, failure to obey an order (twice), wakeup call, ADAPCP failure, failure to return to duty and refraining from the use of alcohol.
- DA Form 1574 (Report of Proceedings by Investigation Officer/Board of Officer) shows the board commenced on 12 February 2002. The findings show the

applicant is undesirable for retention in military service because he wrongfully used marijuana and was AWOL. His rehabilitation is not deemed possible. The board recommended the applicant be discharged under the provisions of AR 635-200, paragraph 14-12c, for Commission of a Serious Offense, and that his service be characterized as UOTHC. The applicant acknowledged receipt of the administrative separation proceedings on 26 February 2002.

- The applicant was discharged on 15 April 2002, in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c (2), for misconduct with Separation Code JKK and Reentry Code 4. His service was characterized as UOTHC.
- On 20 August 2010, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason for his discharge.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "his military service has been characterized improperly hindering his professional career and family name. The correction should be made to reflect the service he provided to his country; to restore the benefits he forfeited and to restore honor to his family name, as every generation of his family has served our country".

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows the applicant underwent a mental status evaluation on 25 September 2001. The evaluation indicates the applicant had no significant mental illness or diagnosis, he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

e. 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, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD and OMH. On 25 April 2024, an ARBA staff member from the Case Management Division requested the applicant provide medical documentation that support his contention of OMH and PTSD. As of 3 June 2024, no response was provided.

f. 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.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts mitigating conditions of 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 discharge. In addition, the applicant provides no rationale or index trauma for his assertion of PTSD.

(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 any BH diagnosis including PTSD or any other mental health condition.

h. Per Liberal Consideration guidelines, his contention of PTSD and OMH is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The opine found no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the patter of misconduct. The Board carefully considered the applicant's character letters of support that attest to his integrity, his struggle with anxiety and depression. Furthermore, the Board noted the applicant's self-asserted PTSD and OMH, however, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition for the Board to weigh. Based on the preponderance of evidence and the advising official opine, the Board denied relief.

3.. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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, 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. 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. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. AR 635-200 (Active-Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct

when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could 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 Post-Traumatic Stress Disorder; 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.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//