

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230013414

APPLICANT REQUESTS: reconsideration of his previous requests to upgrade his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Behavioral Health and Medical Records
- DD Form 214 (Report of Separation from Active Duty)

FACTS:

1. Incorporated herein by reference are military records which were summarized in previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20090021892 on 29 July 2010 and AR20180010730 on 25 January 2021.
2. The applicant states in effect, he is requesting a review of his personnel file and medical records in order to receive a discharge upgrade from under other than honorable conditions. He believes at the time of the offense he was suffering from mental health issues. The medical records provided show a continuity of care regarding his mental health issues.
3. The applicant provides his behavioral health and medical records (154 pages) for treatment received from approximately June 1998 to May 2023.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 2 August 1977.
 - b. Three DA Forms 4187 (Personnel Action) change the applicant's duty status:
 - 1 March 1978 from present for duty to absent without leave (AWOL)

- 30 March 1978 from AWOL to dropped from the rolls (DFR)
- 8 April 1978 from DFR to present for duty

c. On 18 April 1978, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows:

- he had no significant mental illness
- he was mentally responsible
- he was able to distinguish right from wrong
- he was able to adhere to the right
- he had the mental capacity to understand and participate in board proceedings
- he met the retention standards prescribed in Chapter 3, AR 40-501

d. The service record includes the applicant's medical examinations, dated 21 April 1978, for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

e. The service record is void of the specific facts and circumstances surrounding the applicant's discharge.

f. Orders 87-600 dated 3 May 1978, reduced the applicant in rank from private/E-2 to private/E-1, effective 25 April 1978.

g. On 11 May 1978, he was discharged from active duty under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 8 months and 4 days of active service with 36 days of lost time. He was assigned separation designator JFS with reentry code 3. It also shows he was awarded or authorized:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-60)

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. The applicant previously petitioned the Army Board for Correction of Military Records (ABCMR) for the same relief that now comes before the Board:

a. Docket Number AR20090021892 was reviewed on 29 July 2010, the Board carefully considered the applicant's request for an upgrade of his discharge. Although the specific facts and circumstances surrounding the applicant's discharge are not available, the applicant was given a mental evaluation prior to separation confirming the applicant was suffering from no disabling mental condition that warranted his separation processing through medical channels. The record also shows the applicant entered the military at the age of 17 to get away from his father. The reason for the applicant wanting to be away from his father or any evidence of abuse or negligence from his father was not provided. Therefore, considering all the facts of the case, the type of discharge was proper, and the characterization of service directed was equitable. The Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

b. Docket Number AR20180010730 was reviewed on 25 January 2021, the Board considered the applicant's request, supporting documents, and the conclusion of the advisory official. The Board noted the applicant was diagnosed and treated for several psychiatric conditions 30 years after discharge. The Board concurred with the medical advisory opinion finding the medical documentation provided does not support the applicant's diagnoses existing at the time of his service nor being related to his military service. 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. Therefore, the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20090021892 on 29 July 2010.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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

9. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service of under other than honorable conditions (UOTHC). He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 August 1977.
- The applicant provided evidence of being AWOL from 1 March 1978 to 8 April 1978, but the service record is void of the specific facts and circumstances surrounding the applicant's discharge.
- The applicant was discharged on 11 May 1978 under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He completed 8 months and 4 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was suffering from mental health issues at the time of his misconduct. A Report of Mental Status Evaluation dated 18 April 1978 indicated the applicant was mentally responsible, able to distinguish right from wrong, and met retention standards. No mental health diagnosis was rendered.

d. The applicant provided 154 pages of medical and mental health records dating from June 1998 to January 2023 that included documentation from Southeastern Behavioral Healthcare, Abbe Center for Community Mental Health, Black Hawk Grundy Mental Health Center, St. Luke's Hospital, Katherine Shaw Bethea Hospital, and Avera McKennan Hospital. In summary, the applicant has had numerous mental health diagnoses including: Cocaine Abuse, Alcohol Abuse, Cannabis Abuse, Polysubstance induced mood disorder, Personality Disorder with traits of antisocial and narcissistic, Adjustment Disorder, Bipolar Disorder, Schizoaffective Disorder, Depressive Disorder, Anxiety Disorder, history of ADHD, and Psychotic Disorder. He has also been treated with multiple psychiatric medications and different trials of medication over the past 25 years. The onset of his drug use, which included cocaine, methamphetamine, marijuana, and alcohol, was unclear, but documentation across facilities indicated sobriety since 1998. Documentation did not address his military service. The most recent progress note provided was dated 1 May 2023 and indicated stability, noting improved mood, sleep, and energy level with the use of an antipsychotic, antidepressant, and an anxiolytic. His diagnoses were: Schizophrenia, Unspecified Depressive Disorder, Unspecified Anxiety Disorder, history of antisocial personality disorder, and tobacco use disorder.

e. Documentation from the State of Iowa Disability Determination Services dated 2 February 2000 discussed a history of "several" hospitalizations leading up to his discontinuation of drug and alcohol use and a hospitalization in 1998. Documentation also stated that the onset of psychotic symptoms was in April 1999, and at that time he was admitted to a psychiatric inpatient facility.

f. There was insufficient evidence that the applicant was diagnosed with any psychiatric condition while on active service.

g. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed the applicant engaged VA in 2018 utilizing their homeless program. There was no indication of mental health related diagnoses or treatment.

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing. The applicant provided substantial documentation of a mental health diagnosis and treatment from 1998 to current, but there was no documents, reports, or records indicating the presence of behaviors or symptoms associated with a mental health condition.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. He provided documentation of a history of mental health treatment beginning in 1998. Documentation noted an onset of psychotic symptoms in 1999 following years of poly-substance abuse. His primary diagnosis is Schizophrenia, and he has had multiple hospitalizations and medication trials.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. However, no evidence to support the presence of a mental health condition while in service was provided.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service, and his treatment records provided did not indicate his mental health condition was a result of his military service. Avoidant behavior, such as going AWOL, can be a natural sequela to some mental health conditions, but the presence of the misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. Additionally, without knowledge of the basis for separation, no opinion regarding mitigation under liberal consideration can be made.

j. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 the medical review, the Board concurred with the advising official finding insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing. The opine noted, the record is absent documents, reports, or records indicating the presence of behaviors or symptoms associated with a mental health condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination. Under liberal consideration, the Board carefully reviewed the applicant's medical and mental health records dating from June 1998 to January 2023 that included detailed documentation. However, the Board noted, the applicant's records does not show any evidence to support the presence of a mental health condition while in service. The Board found reversal of the previous Board decisions are without merit and relief was denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20090021892 on 29 July 2010 and AR20180010730 on 25 January 2021.



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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

2. 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.

3. 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.

4. 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.

5. 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//