

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230013751

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)

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 he is seeking an upgrade of his under other than honorable discharge and an amendment to his DD Form 214 (Report of Separation from Active Duty). He believes an entry level separation should have been considered because he was dealing with anxiety and depression. He has requested his medical records and pertinent documents, but he was only able to obtain a DD Form 214 of poor quality. He petitions for a correction based on his difficulty adjusting to military life and his surroundings. He further noted that environmental conditions in North Carolina were inadequate, and he was homesick. He became fatigued, isolated, and also felt that African American Soldiers were treated unfairly. He accepted his punishment, served his time, and further noted lack of guidance and leadership left him experiencing mental health challenges. His life following discharge from the military has been exemplary as a result of some of the skills he adopted from the military. He notified his commander and first sergeant of the challenges because he believed he made a mistake joining the military which led to his absence without leave (AWOL) and therefore, an entry level separation should be considered. The applicant marked post-traumatic stress disorder and other mental health as condition related to his request on the DD Form 149.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 September 1975.

b. His DA Form 2-1 (Personnel Qualification Record) listed the applicant as AWOL from 28 February 1976 to 18 September 1977.

c. A DA Form 4187 (Personnel Action) shows the applicant surrendered to military authorities at Fort Stewart, GA on 19 September 1977.

d. The service record includes the applicant's medical examinations, dated 28 September 1977, for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service and separation.

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

e. On 28 September 1977, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he possessed sufficient mental capacity to understand and participate in any administrative or judicial proceedings in which he is involved.

f. An extract of the DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of absenting himself from his organization from on or about 28 February 1976, and did remain so absent until on or about 19 September 1977.

g. On 28 September 1977, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he was making the request of his own free will
- maximum punishment
- he was guilty of the charge(s) against him or of (a) lesser included offense(s)
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of his rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

h. On 19 December 1977, the separation authority approved discharge for separation under the provisions of AR 635-200, Chapter 10, for the good of the service.

He was reduced to the lowest enlisted grade and issued an Under Other Than Honorable Conditions Discharge Certificate.

i. He was discharged from active duty on 4 January 1978 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10. His DD Form 214 shows he completed 8 months and 14 days of active service with 569 days of lost time. He was assigned separation code JFS with the reason and authority listed as "Chapter 10, AR 635-200," with reenlistment code 3B. It also shows he was awarded or authorized the:

- Sharpshooter Badge M-16
- Expert Badge Hand Grenade
- Sharpshooter Badge .45 Caliber Pistol

4. On 15 May 1986, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice 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.

7. 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.

8. 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 22 September 1975.
- An extract of the DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of absenting himself from his organization from on or about 28 February 1976, and did remain so absent until on or about 19 September 1977.
- On 28 September 1977, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.

- Applicant was discharged on 4 January 1978 with an under other than honorable conditions characterization of service under the provisions of AR 635-200, Chapter 10. His DD Form 214 shows he completed 8 months and 14 days of active service with 569 days of lost time. He was assigned separation code JFS and reenlistment code 3B.
- On 15 May 1986, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

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 states he believes an entry level separation should have been considered because he was dealing with anxiety and depression. He has requested his medical records and pertinent documents, but he was only able to obtain a DD Form 214 of poor quality. He petitions for a correction based on his difficulty adjusting to military life and his surroundings. He further noted that environmental conditions in North Carolina were inadequate, and he was homesick. He became fatigued, isolated, and also felt that African American Soldiers were treated unfairly. He accepted his punishment, served his time, and further noted lack of guidance and leadership left him experiencing mental health challenges. His life following discharge from the military has been exemplary as a result of some of the skills he adopted from the military. He notified his commander and first sergeant of the challenges because he believed he made a mistake joining the military which led to his absence without leave (AWOL) and therefore, an entry level separation should be considered. 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 28 September 1977. 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. In addition, a medical examination, dated 28 September 1977, for the purpose of separation shows he was in good health and, contrary to his contention of experiencing anxiety and depression, in his self-report he did not endorse any mental health concerns including depression, excessive worry, nervousness, or sleep issues.

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, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD and OMH.

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 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.

g. 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 noted the record is absent 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 misconduct of AWOL for 569 days. Although the applicant stated his post service has been exemplary, he provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board noted the applicant completed 8 months and 14 days of active and has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

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, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets the criteria governing the issuance of honorable, General, and Under Other Than Honorable Conditions Discharge Certificates.

a. An honorable discharge is a separation with honor. Issuance of an Honorable Discharge Certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or current period of obligated 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. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be used for misconduct, for homosexuality, for security reasons, or for the good of the service.

d. Chapter 10 of this regulation states a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice 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. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

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.

//NOTHING FOLLOWS//