

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230013774

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- correction of his DD Form 214 (Report of Separation from Active Duty), to show a change in narrative reason for separation and separation code to secretarial authority

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief (6 pages) with exhibits (35 pages)
  - Exhibit 1 – Certificate of Military Service
  - Exhibit 2 – Records of formal counseling` and statements (8 pages)
  - Exhibit 3 – Application for Conscientious Objector Discharge (7 pages)
  - Exhibit 4 – two DA Forms 2627 (Record of Proceedings Under Article 15, UCMJ) (5 pages)
  - Exhibit 5 – Synopsis and recommendation of conscientious objector investigation (2 pages)
  - Exhibit 6 – Report of Psychiatric Evaluation
  - Exhibit 7 – Notice of Initiation of Elimination Proceeding (4 pages)
  - Exhibit 8 – Separation Authority approval and elimination packet (7 pages)

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. Counsel states:

a. Since most discharges from the armed forces are honorable, issuing a UOTHC carries a penalizing effect comparable to a bad conduct discharge, improperly stigmatizing and harming the applicant. The applicant has been deprived of his honor and good name and continues to be injured economically and socially nearly fifty years after his discharge from the Army.

b. The applicant is repentant about his misconduct and still speaks proudly of his military service. As documented, reported, and supported by a psychiatrist during his time in service, the applicant was acutely depressed. The applicant's actions were those of a desperate and immature young man who did not know how to ask for help. Nor was he appropriately diagnosed and offered the treatment he needed for acute depression. It would be patently unfair to allow the undesirable discharge to follow him for the rest of his life because no help was available to the applicant at a time when the repercussions of mental health issues were so little understood.

c. When the applicant's fragile mindset is considered correctly, it becomes apparent that his depression mitigates his misconduct. Although the applicant's depression was annotated in a counseling statement, there is no evidence that he was diagnosed with depression and offered treatment or medication to address the underlying cause of his misconduct. As such, the applicant's undiagnosed mental health issues warrant a correction of his military records because of our present understanding of how depression can erode the military bearing and performance of a soldier.

d. The purpose of the undesirable discharge the applicant received has long since been fulfilled. Had our current understanding and treatment of mental health issues been better understood, a different outcome would have been possible for the applicant. Therefore, the Board should grant the applicant relief in the best interest of justice.

3. The applicant enlisted in the Regular Army on 22 August 1975.

4. An Army Europe (AE) Form 113-3 (Record of Formal Counseling), dated 17 February 1976, shows the applicant received a formal counseling when he reported he could not provide medical support for ranges and company training due to him being a conscientious objector, despite being informed that he did not have to handle weapons or ammunition and could provide medical coverage for firing ranges.

5. On 8 March 1976, the applicant informed his command of his intentions to apply for conscientious objector status.

6. On 11 March 1976, the applicant submitted his application for a conscientious objector discharge. The applicant's immediate commander recommended disapproval of the applicant's request for a conscientious objector discharge, noting the applicant's attempts to use every available administrative action to terminate his voluntary

obligation. The commander further cited the applicant's attempts to be discharged from the Army on the grounds of an enlistment contract violation, which proved to be false, and his direct request for an expeditious discharge which the commander denied.

7. On 12 March 1976, the applicant received a formal counseling for being relieved from duty as charge of quarters runner on 10 March 1976.

8. A Standard Form (SF) 88 (Report of Medical Examination) and an SF 93 (Report of Medical History), dated 23 March 1976, show the applicant underwent a medical examination as part of the expeditious discharge program. The applicant reported being treated at MHCS (Mental Health Counseling Services) for depression and other tensions, on 6 February 1976. However, the examining provider determined he was qualified for separation.

9. On 2 April 1976, he accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being derelict in the performance of his duty, on or about 11 March 1976. His punishment included reduction to private/E-1 (suspended for 180 days), forfeiture of \$84.00 pay, 7 days extra duty, and 7 days restriction. His appeal of his punishment was denied.

10. On 13 April 1976, the applicant underwent a complete psychiatric evaluation as part of his consideration for a Conscientious Objector discharge. His psychiatric evaluation noted he showed definite traits of passivity and immaturity; he would not likely benefit from further sessions at MHCS; he was psychiatrically cleared for any further action deemed appropriate by his command.

11. On 14 April 1976, the applicant's intermediate commander recommended disapproval of the applicant's request for a conscientious objector discharge.

12. Following a hearing and interview with the applicant, on or about 8 June 1976, the investigating officer recommended the applicant's request for a Conscientious Objector discharge be disapproved.

13. On 9 June 1976, the applicant received a formal counseling for behaving in a disrespectful manner.

14. On 21 June 1976, the applicant's senior intermediate commander recommended disapproval of the applicant's request for a Conscientious Objector discharge. The commander noted, since the applicant initiated his request, he was counselled on several occasions and was the subject of two NJPs. He further noted the applicant would be considered for elimination under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability).

15. On 25 June 1976, the applicant's Conscientious Objector discharge application was returned for correction of administrative deficiencies.

16. On 2 April 1976, he accepted NJP, under the provisions of Article 15 of the UCMJ, for disobeying a lawful command from his superior commissioned officer, on or about 16 June 1976. His punishment included reduction to private/E-1.

17. A memorandum issued by Headquarters, 1st Brigade, 8th Infantry Division, Office of the Chaplain, APO, NY, dated 1 July 1976, shows the applicant was interviewed for and received counseling concerning his application for Conscientious Objector Status on numerous occasions. His counseling record shows the applicant could not verbalize a coherent philosophical or theological basis for being a conscientious objector and presented no sincere evidence of a commitment to conscientious objection. The Chaplain noted that the applicant presented himself as an immature, impulsive, passive-aggressive, dependent person who seemed to be acutely depressed and deeply hurting as he attempted to socialize with the other Soldiers in the barracks.

18. On 6 July 1976, the applicant again underwent a complete psychiatric evaluation as part of his consideration for a Conscientious Objector discharge. His psychiatric evaluation shows the applicant was diagnosed with depressive reaction with secondary situational maladjustment and immature personality and noted he showed definite traits of passivity and immaturity; he would not benefit from further sessions at MHCS; he was psychiatrically cleared for any further action deemed appropriate by his command.

19. On 11 August 1976, the applicant's commander recommended the applicant's separation from the service under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-5a (4), for an established pattern for shirking.

20. On 12 August 1976, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-5a (4), for an established pattern for shirking.

21. On the same date, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and may encounter substantial prejudice in civilian life. He did not submit a statement in his own behalf.

22. On 13 August, the applicant's chain of command recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-5a (4). As reasons for the proposed action, his intermediate commander noted the applicant's complete disregard for all types of military authority, as evidenced

by the applicant's continual substandard performance. He further noted the applicant had not responded to rehabilitative measures taken by his chain of command, and any additional efforts at rehabilitation would prove fruitless and become a severe morale and disciplinary problem.

23. On 26 August 1976, the separation authority approved the recommended discharge and directed the issuance of an Undesirable Discharge Certificate (DD Form 258A) with separation program designator code of "JKJ."

24. On 31 August 1976, the applicant's application for a Conscientious Objector discharge was returned without further action based on instructions from the Department of the Army Conscientious Objector Review Board.

25. The applicant was discharged accordingly on 2 September 1976, under the provisions of Army Regulation 635-200, Chapter 13, paragraph 13-5a (4), with separation program designator code "JKJ" and reenlistment code "RE-3." His characterization of service was UOTHC. He completed 1 year and 11 days of active service.

26. Counsel provides two statements detailing the applicant's conscientious objector disclosure and an incident of disrespectful behavior during a morning formation. These documents are provided in their entirety for the Board's review within the supporting documents.

27. Regulatory guidance in effect at the time provided soldiers separated by reason of unfitness under the provisions of Army Regulation 635-200, Chapter 13, would be furnished an Undesirable Discharge Certificate.

28. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

29. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for an upgrade of his under other than honorable conditions (UOTHC) characterization of service and a change to his narrative reason for separation and separation code to secretarial authority. He contends he experienced depression that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 22 August 1975; 2) On 17 February 1976, the applicant received a formal counseling when he reported he could not provide medical support for ranges and company training due to him being a conscientious objector; 3) On 8 March 1976, the

applicant informed his command of his intentions to apply for conscientious objector status; 4) On 2 April 1976, he accepted nonjudicial punishment (NJP) for being derelict in the performance of his duty on 11 March 1976; 5) Following a hearing and interview with the applicant, on 8 June 1976, the investigating officer recommended the applicant's request for a Conscientious Objector discharge be disapproved; 6) On 9 June 1976, the applicant received a formal counseling for behaving in a disrespectful manner; 7) On 21 June 1976, the applicant's senior intermediate commander recommended disapproval of the applicant's request for a Conscientious Objector discharge. The commander noted, since the applicant initiated his request, he was counselled on several occasions and was the subject of two NJPs. He further noted the applicant would be considered for elimination under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13 (Separation for Unfitness or Unsuitability); 8) On 2 April 1976, he accepted NJP for disobeying a lawful command from his superior commissioned officer; 9) The applicant was discharged on 02 September 1976, Chapter 13, paragraph 13-5a (4). His characterization of service was UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided by the applicant.

c. The applicant asserts he was experiencing depression while on active service, which mitigates his misconduct and his choice to apply as a Conscientious Objector. There is evidence the applicant was experiencing difficulty adapting to his enlistment in the military. He was reported on 11 March 1976 to have attempted other avenues to terminate his voluntary military obligation prior to applying for Conscientious Objector status. There was evidence the applicant was reporting depressive and anxiety symptoms and was involved in behavioral health treatment while on active service. On 23 March 1976, the applicant underwent a medical examination as part of the expeditious discharge program. The applicant reported being treated at MHCS (Mental Health Counseling Services) for depression and other tensions. However, the examining provider determined he was qualified for separation. The applicant also underwent two complete psychiatric evaluations as part of his consideration for a Conscientious Objector discharge (13 April 1976 and 06 July 1976). He was reported as experiencing acute depression or described as demonstrating traits consistent with a depressive presentation. The applicant was also reported to likely not benefit from continued behavioral health treatment and was psychiatrically cleared for further action from his command. While the applicant did not meet criteria for a Conscientious Objector according to the military Chaplain, who interviewed the applicant, he did describe the applicant again as depressed and experiencing difficulty in the military.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition, and the applicant does not receive service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct and decision to apply as Conscientious Objector, which led to 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 he experienced depression and that mitigates his misconduct and decision to apply as Conscientious Objector. There is evidence the applicant had been diagnosed and reported as experiencing depression while on active service.

(2) Did the condition exist or experience occur during military service? Yes, Yes, the applicant asserts he experienced depression and that mitigates his misconduct and decision to apply as Conscientious Objector. There is evidence the applicant has been diagnosed and reported as experiencing depression while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing difficulty adjusting to the military and depression while on active service. The applicant did appear to engage in erratic and avoidant behavior to avoid his enlistment, which can be natural sequelae to depression. It is likely the applicant attempted multiple avenues to escape his situation to include applying as a Conscientious Objector due to his ongoing depression and negative emotions associated with his inability to adapt to the military. Therefore, per Liberal Consideration, the applicant's misconduct and choice to apply to be a Conscientious Objector, which led to his discharge are mitigable.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant was discharged based on a complete disregard for all types of military authority and substandard performance. The Board noted the applicant's contention that his conscientious objection assertion was the basis for the recommendation.
2. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant experienced an issue/condition that mitigates his misconduct. Based on the medical review, the Board determined partial relief was warranted and voted to upgrade the applicant's characterization of service to under honorable conditions (General) and to amend the corresponding blocks of his separation document to reflect Secretarial Authority vice Chapter 13.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 2 September 1976, to show:

- item 9c (Authority and Reason): Army Regulation 635-200
- item 9d (Character of Service): Secretarial Authority
- item 9f (Type of Certificate Issued): DD Form 257
- item 10 (Reenlistment Code): 1

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his characterization of service to honorable.

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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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. Paragraph 13-5(a), in effect at the time, provided for separation for unfitness, which included frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug abuse, an established pattern for shirking, pattern showing dishonorable failure to pay just debts, pattern showing dishonorable failure to contribute adequate support to dependents, and homosexual acts. An individual separated by reason of unfitness would be furnished an undesirable discharge certificate, except that an honorable or general discharge certificate could be issued if the individual had been awarded a personal decoration or if warranted by the particular circumstances in their case.
  - b. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.
  - c. 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.
  - d. 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.

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 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.

5. 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 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, 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//