

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230013785

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service

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

- DD Form 149 (Application for Correction of Military Record)
- four self-authored statements, undated, 15 April 2020, 9 November 2021, and 19 September 2023
- work history summary, 1958 to 1999
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 6 April 1962
- criminal record search report, 23 October 2012
- two letters of support, 5 September 2023, and 9 September 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR2004104146 on 23 September 2004.

2. The applicant states:

a. While stationed in Korea, he injured his right knee, had surgery, and was given an L3 profile. He also injured his middle ear and was medically evacuated to Walter Reed Medical Center, Bethesda, MD, where he had surgery and had a growth removed. After surgery, he was stationed at Fort Riley, CO. While at Fort Riley, he was ordered by his commanding officer (CO) to go on a force march with his unit. He protested to his CO that he could not do the march because he had constant pain and permanent knee damage due to his knee surgery. He also told his CO that his doctor's orders were not to be on his feet for more than two hours a day and that marching could harm his health. The next day, he decided to go home.

b. Upon his return to Fort Riley, he surrendered to military authorities and was put under house arrest until his court-martial. He was sentenced to six months of

confinement and forfeiture of two-thirds pay. He was approached by an officer during his confinement and offered an opportunity to get out of the stockade and out of the Army. He agreed and signed the paperwork he was presented. He was advised not to read the document, seek advice from counsel, and not given the option to stay in the Army. Because of his house arrest, confinement for almost four months, bad medical conditions, and his actions in the military and at home, where he was arrested and charged with stealing a cigarette machine, he feared retribution. He also did not believe he was mentally capable of making such a life-changing decision.

c. He is now 79 years old and has lived a full life. He is an active member of his United Methodist Church, where he served as a chairman of the Board of Trustees and does volunteer work for church activities. He volunteered as a Little League baseball coach and umpire for many years. He worked in construction, as an electrician for his family business, and as an electrician for Isothermal Community College, where he retired after 22 years of service. While employed at the college, he volunteered and started a program called "Fish for Kids," an annual fishing day for children where he taught the kids how to fish. He and his wife have five children, over 23 grandchildren, 13 great-grandchildren, and one great-great-grandchild. He and his wife are legal guardians to two of his grandsons (14 and 17 years old), who they have been raising for the last ten years.

d. He was a young, inexperienced nineteen-year-old kid who had poor judgment and did some stupid and disrespectful things like going absent without leave (AWOL), not following orders, and affiliating himself with the wrong people back home, which ended in criminal charges against him. The Army taught him a lot about life, and he does not blame the Army for the decision to discharge him. However, he believes clemency is warranted because the double punishment (confinement and UOTHC discharge) he received was too severe compared to today's standards. He loves his country and regrets the poor decisions he made in his youth.

3. The applicant enlisted in the Regular Army on 29 July 1960, for 3 years. The highest rank/grade he held was private /E-2.

4. On 11 October 1961, he accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice, for failing to go to his appointed place of duty on or about 9 October 1961. His punishment included extra duty for 14 days.

5. Special Court Martial Order Number (SPCMO) 8, issued by Headquarters, First Battle Group, 5th Infantry, Fort Riley, KS on 13 January 1962, shows the applicant was found guilty of AWOL on or about 18 November 1961 and did remain so absent until on or about 11 December 1961. He was sentenced to confinement at hard labor for a period of six months, forfeiture of \$40.00 pay per month for six months, and reduction to E-1. The sentence was approved, and ordered duly executed on 13 January 1962.

6. On 16 February 1962, the applicant underwent a neuropsychiatric examination as part of his consideration for discharge due to his misconduct. His psychiatric evaluation noted, he was and is mentally responsible, was able to distinguish right from wrong and to adhere to the right and had the mental capacity to understand and participate in board proceedings. It was further noted, the applicant had a longstanding basic character and behavior disorder and could be strongly presumed his pattern of behavior would tend to exist permanently. He was diagnosed with inadequate personality, chronic, moderate, manifested by inadequate responses to demands, eccentricity, poor judgement, accident proneness, hypochondriasis, social incompatibility, ineptness, and lifelong borderline adjustment.

7. A letter from County of Rutherford Office of Sheriff, Rutherfordton, NC, dated 5 March 1962, to the applicant's commander, shows he had the following civilian record while on active duty with the Army:

- 27 February 1961, speeding
- 2 March 1961, arrested for stealing cigarette dispensing machine and made bond to appear in court
- 6 March 1961, speeding
- 13 March 1961:
 - tried for larceny over \$100.00; waived preliminary hearing through attorney in open court
 - speeding in excess of 100 miles per hour, reckless driving, failed to stop for stop sign; sentenced to 4 months on roads (suspended for 12 months on costs & conditions he pay fine of \$100.00, be on good behavior and surrender operators license to the Department of Motor Vehicles)
- 14 March 1961, larceny of cigarette machine - entered a plea of guilty thru his attorney for larceny of property valued at more than \$100.00
- 16 March 1961, sentenced to jail not less than 18 months no more than 24 months and work under the supervision of the State Prison Department (suspended 3 years on conditions he pay court cost, be on good behavior, pay \$17.88, pay for damage done to done deputy sheriff's car during race, not operate a car in the state of NC)
- 1 April 1961, warrant written for robbery and assault
- 23 August 1961, warrant served and made \$2,500.00 bond to appear in November in Superior Court; case continued until March 1962

8. On 14 March 1962, the applicant underwent a complete medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted, he was qualified for discharge.

9. Two Standard Forms 513 (Consultation Sheet), dated 15 March 1962 and 23 March 1962, show the applicant was seen by the orthopedic and medical clinics for torn ligaments in his right knee that still hurt after operation 9 months prior and severe headaches with eye troubles causing him to sometimes to pass out. The orthopedic examination revealed his right knee was stable and his neurological exam was normal and noted his headaches existed prior to service.

10. The applicant's record is void of his commander's notification of intent to initiate separation action.

11. On 19 March 1962, the applicant was counseled on the basis for the contemplated separation action recommended under the provisions of Army Regulation 635-208 (Personnel Separations-Discharge-Unfitness) its effects, and the rights available to him. He understood if he was issued a UOTHC discharge, he may encounter substantial prejudice in civilian life and be deprived of many rights and benefits as a veteran under both Federal and State law. He waived his right to a hearing before a board of officers and elected not to submit statements in his own behalf.

12. The applicant's chain of command recommended the applicant's separation from service, under the provisions of Army Regulation 635-208. As reasons for the proposed action, his immediate commander cited the applicant's military records, civilian convictions, and pending action in civil court while in the military.

13. On 31 March 1962, the separation authority approved the recommended discharge and directed the issuance of an Undesirable Discharge Certificate.

14. SPCMO Number 48, issued by Headquarters, First Battle Group, 5th Infantry, Fort Riley, KS on 2 April 1962, shows the applicant's unexecuted portion of the sentence to confinement at hard labor for six months, forfeiture of \$40.00 per month for six months, and reduction to E-1 was ordered remitted effective upon the date of the applicant's discharge under the provisions of Army Regulation 635-208.

15. The applicant was discharged on 6 April 1962, in the grade of E-1, under the provisions of Army Regulation 635-208. His service was characterized as UOTHC, with Separation Program Number "28B" (unfitness) and reenlistment code "RE-3." He was credited with 1 year, 4 months, and 17 days of net active service, 3 months and 13 days of foreign service, and 111 days of lost time during this period.

16. The applicant provides:

a. A work history summary showing his employers, jobsites, and job duties from 1958 to 1999.

b. A criminal record search report which shows the applicant was cited for various motor vehicle violations which were dismissed, waived, or paid.

c. Two letters of support from his employer and pastor, which state, he is a loving, caring, and dedicated father, grandfather, friend, and faithful member of the church with outstanding character and judgement. He loves to help others and sets a notable example for others to follow.

17. The ABCMR considered the applicant's request for an upgrade of his UOTHC discharge on 23 September 2004. After reviewing the applications and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

18. Regulatory guidance in effect at the time provided an undesirable discharge was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-208, by reason of unfitness.

19. 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.

20. Based on the applicant's contention of permanent damage to his right knee and middle ear injury, the Army Review Boards Agency (ARBA) medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

MEDICAL REVIEW:

The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

a. The applicant is applying to the ABCMR requesting an upgrade his 6 April 1962 under other than honorable conditions discharge. He states asserts he went absent without leave in an effort to protect a knee injury. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 29 July 1960 and was discharged under other than honorable conditions on 6 April 1962 under the provisions provided in AR 635-208,

Personnel Separations – Discharge: Undesirable Habits and Traits of Character (22 January 1960). The separation program number 28B denotes “Unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities.” Because of the period of service under consideration, there are no encounters in the EMR documents in iPERMS. There are no entries in JLV.

b. A Special Court Marital Order dated 13 January 1962 shows the applicant was found guilty of absence without leave (AWOL) from 18 November – 11 December 1961.

c. He underwent a neuropsychiatric examination on 16 February 1962 as part of the screening program for Soldiers entering the stockade: “The subject stated that he left his organization on 18 November 1961, and went to his home in Forest City, North Carolina. He remained there until 11 December 1961, at which time he returned to his organization in Fort Riley, Kansas. He stated that he went AWOL because of being harassed by the Officers and NCO’s in his unit, and because of an infirmity of his leg which, he felt, hindered him from accomplishing the strenuous training requirements of his organization ...”

(1) COMMENT: This individual demonstrates clear predisposition and recognizable trends toward subsequent development of a major mental illness at some unknown future time.

This individual's overall adaptability and future military potential are estimated as being very much below average for the general male population.

(2) DIAGNOSIS: 3203 Inadequate Personality, chronic, moderate, manifested by inadequate responses to demands, eccentricity, poor judgment, accident proneness, hypochondriasis, social incompatibility, ineptness, and lifelong borderline adjustment. LOD No, EPTS [Existed prior to Service].

(3) FINDINGS: On the basis of this examination, it is felt that:

- There are no disqualifying mental defects sufficient to warrant separation through medical channels.
- The individual was and is mentally responsible, able to distinguish right from wrong and to adhere to the right and has the mental capacity to understand participate in board proceedings.
- The individual has a longstanding basic character and behavior disorder and it can be strongly presumed that, regardless of any administrative action, this pattern of behavior will tend to exist permanently.
- This individual is unsuitable for further military duty.
- Under current regulations, it is questionable whether the approval of this individual's enlistment for military service was appropriate.”

d. On 14 March 1962, he was evaluated for a history of headaches and eye troubles. The provider documented a normal examination, stated "Normal neurological exam, Headaches EPTS. Cleared for Separation."

e. On 14 March 1962, he was evaluated by orthopedics for continued symptoms after apparently having undergone surgery to repair ligaments in his right knee 9 months prior. The provider documented an essentially normal examination and cleared the applicant for separation: "Has been seen numerous times in this clinic. Symptoms, as presented to me, are now different from those given to another recent examiner. Examination reveals a stable right knee, without effusion and without crepitation on motion. There is mild right quadriceps atrophy, which patient has had for years. X-rays of right knee are negative. Cleared for separation. Profile L-1. Is orthopedically physically fit for retention in service under provisions of AR 40-501 [Standards of Medical Fitness]."

f. The applicant underwent a pre-separation medical examination on 14 March 1962. The provider documented a normal examination except for the need for significant dental treatment and the applicant was found qualified for separation. On 20 March 1962, his company commander recommended he be discharged under AR 635-208 for "Undesirable," for both incidents which had occurred in the military and pending action in a civilian court. His request was approved by the Commanding General of Ft. Riley on 21 March 1962 with the directive he receive an "Undesirable Discharge Certificate."

h. There is no evidence the applicant had a service incurred mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge for misconduct. Thus, there is no cause for a referral of this case to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

Kurta Questions:

- A. Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO
- B. Did the condition exist or experience occur during military service? N/A
- C. Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant exhibited a pattern of misconduct consisting of a court-martial conviction and multiple civilian violations. As a result, his chain of command initiated separation action against him for unfitness due to his frequent involvement in incidents of a discreditable nature with civil or military authorities. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding no evidence the applicant had a service incurred mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge for misconduct. Thus, there is no cause for a referral of this case to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Also, although the applicant provides letters of support from his employer and his pastor in support of a clemency determination, the Board determined such letters did not outweigh the serious misconduct he committed. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were 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 to amend the decision of the ABCMR set forth in Docket Number AR2004104146 on 23 September 2004.

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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 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.

2. Army Regulation 635-200 (Personnel Separations – General Provisions for Discharge and Release), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

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 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, 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//