

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230013810

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), 25 September 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 28 February 2001
- Department of Veterans Affairs (VA) Form 10-5345 (Release of Medical Information), 27 September 2023

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:

a. He left the Army depressed and suicidal. His platoon sergeant enjoyed tormenting him. He got drunk and tried to jump but friends stopped him. A priest came to his room and got him admitted. After he got out of the Army he was demoted.

b. He went to the hospital for help and the medication he was given made him more depressed. He was told he was given it to prevent him from committing suicide. He questions why he was given something to make him even more depressed.

c. It always felt unfair to him that this happened to him. He has been treated and kept to himself. His life isn't getting better He has had surgery to his right foot, he is unemployed and may get divorced. He has been drug-free since 2008 and alcohol free since 2021. He is an Alaskan native.

d. He annotated other mental health as an issue/condition related to his request.

3. A review of the applicant's service records show:

a. On 19 August 1998, he enlisted in the Regular Army for a period of 4 years. In connection with his enlistment, he underwent a medical examination. A SF 88 (Report of Medical Examination) shows he was qualified for service.

b. He was assigned to G Troop, 10th Cavalry, Fort Hood and he was promoted to:

- private 2/E-2 on 29 February 1999
- private first class/E-3 on 1 September 1999

c. On 13 June 2000, he was reported absent without leave (AWOL).

d. On 14 July 2000, he was dropped from the rolls (DFR).

e. On 27 August 2000, he surrendered to military authorities at Fort Richardson, AK. A DD Form 616 (Report of Return of Absentee) shows he was transferred to control of Personnel Control Facility the same day. His status was changed from DFR to present for duty.

f. On 6 September 2000, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from his unit, G Troop, 10th Cavalry, Fort Hood, from on or about 13 June 2000 to on or about 27 August 2000.

g. After consulting with legal counsel on 8 September 2000, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charges against him or of (a) lesser included offenses therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws

- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- there was no automatic upgrading of or automatic review of a less than honorable discharge by any Government agency or the Army Board for the Correction of Military Records and that he must apply to either the Army Discharge Review Board or the Army Board for Correction of Military Records
- an act of consideration by either Board does not imply that his discharge would be upgraded
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so
- he was advised he could request a physical evaluation prior to separation and he elected not to do so

h. On 19 January 2001, the intermediate commander recommended approval of his Chapter 10 request, with an under other than honorable conditions discharge, and forwarded his request to the approval authority.

i. On 20 January 2001, the Judge Advocate General, Fort Sill, reviewed his request for discharge and found no legal objects to further processing his request in accordance with the unit commander's recommendations.

i. On 30 January 2001, the separation authority approved his request for discharge, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He directed the applicant's discharge with an under other than honorable conditions character of service and his reduction to private/E-1.

i. On 28 February 2001, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with a characterization of service of under other than honorable conditions, a separation code KFS, and a reentry code 4. He was credited with completing 2 years, 3 months, and 27 days of active service. His DD Form 214 further shows in:

(1) Block 4a (Grade, Rate, or Rank) and block 4b (Pay Grade) – private/E-1;

(2) Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) –

- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Grenade Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

(3) Block 18 (Remarks) – in part, excess leave from 8 September 2000 to 28 February 2001 (174 days).

(4) Block 29 (Dates of Time Lost During this Period) – 13 June 2000 to 26 August 2000 (74 days).

4. There is no evidence the applicant applied to the Army Discharge Review Board for upgrade of his discharge within its 15-year statute of limitations.

5. 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.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service. He contends other mental health as related to his request.

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 19 August 1988.
- On 13 June 2000, he was reported absent without leave (AWOL).
- On 14 July 2000, he was dropped from the rolls (DFR).
- On 27 August 2000, he surrendered to military authorities at Fort Richardson, AK. A DD Form 616 (Report of Return of Absentee) shows he was transferred to control of Personnel Control Facility the same day. His status was changed from DFR to present for duty.
- On 6 September 2000, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from his unit, G Troop, 10th Cavalry, Fort Hood, from on or about 13 June 2000 to on or about 27 August 2000.
- After consulting with legal counsel on 8 September 2000, he voluntarily requested discharge in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice, authorized the imposition of a bad conduct discharge or dishonorable discharge.
- On 28 February 2001, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, with a characterization of service of under other than honorable conditions, a separation code KFS, and a reentry code 4. He was credited with completing 2 years, 3 months, and 27 days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he left the Army depressed and suicidal. His platoon sergeant enjoyed tormenting him. He got drunk and tried to jump but friends stopped him. A priest came to his room and got him admitted. After he got out of the hospital he was demoted. He went to the hospital for help and the medication he was given made him more depressed. He was told he was given it to prevent him from committing suicide. He questions why he was given something to make him even more depressed. It always felt unfair to him that this happened to him. He has been treated and kept to himself. His life isn't getting better He has had surgery to his right foot, he is unemployed and may get divorced. He has been drug-free since 2008 and alcohol free since 2021. He is an Alaskan native."

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy documentation showing any mental health issues during his time in service. The applicant provides a Department of Veterans Affairs (VA) Release of Medical Information, dated 27 September 2023, where he requested, they provide ARBA medical documentation related to his treatment and hospitalization. No documentation was available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. No VA electronic 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 OMH.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, 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 a mitigating condition, 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 behavioral health condition during military service or after his discharge. However, the applicant should submit any medical documentation that becomes available.

(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 any other mental health condition. However, the applicant's misconduct of going AWOL

occurred two years into his enlistment. Given the lack of other disciplinary events prior to his misconduct, there is the likelihood that some experience or circumstance impacted the applicant's decision-making at the time of his misconduct.

h. Per Liberal Consideration, the applicant's assertion of 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 the medical review, the Board concurred with the advising official finding insufficient evidence, at this time, to support the applicant had a behavioral health condition during military service that mitigates his discharge. The opine noted, the applicant's record is absent any medical documentation indicating he was diagnosed with any behavioral health condition during military service or after his discharge.

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. The Board found the applicant 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 (UOTH) discharge. Therefore, the Board denied relief.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
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|---|---|---|----------------------|
| : | : | : | 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.



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 (Active Duty Enlisted Administrative Separations), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - a. Chapter 3-7 provides:
 - (1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 provided, that a member who has committed an offense or offenses for which the authorized punishment included a punitive discharge may submit a request for discharge in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "In Lieu of Trial by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

5. 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 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

8. 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//