

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230013873

APPLICANT REQUESTS: Reconsideration of his previous request in effect, to upgrade his under other than honorable conditions (UOTHC) discharge to a general discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, undated
- Character letter, 20 May 2022

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 AR20120022597, 30 July 2013 and AR20210016018, 27 June 2022.
2. The applicant states he enlisted in the U.S. Army and served honorably from 31 October 1972 to 4 November 1975. He reenlisted on 5 November 1975. He served his country with pride; when his child's security was compromised, he did not know how to handle it. He did not know if anyone in the military could help him, so he went to find his son and thank God he was okay. The applicant further states he was unable to perform his duties, and states "alcohol and mental health".
3. Although the applicant checked the following boxes in his application: disability, promotions/rank, decorations/awards, and performance/evaluations/derogatory information, it is unclear what relief he is seeking. Therefore, these issues will not be discussed further in these proceedings.
4. The applicant provides a character letter issued by his granddaughter which shows in part her appreciation for everything he does for her.
5. A review of the applicant's service record reveals the following:
 - a. He enlisted in the Regular Army on 31 October 1972.

b. DA Form 2-1 (Personnel Qualification Record), item 21 (Time Lost) shows the applicant was absent without leave (AWOL) from 20 February 1973 to 24 February 1973.

c. His DD Form 214, ending on 27 February 1975 shows he was honorably discharged for the purpose of reenlistment.

d. On 1 April 1975, he received nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for assaulting Staff Sergeant R____, a person then having and in the execution of military police (MP) duties on or about "032100" March 1975.

- his punishment consisted of reduction to the grade of private first class/PFC (suspended for 90 days); and forfeiture of \$95.00 pay for one month
- he was provided the opportunity to seek counsel, acknowledged his rights and decline a trial by court-martial
- He did not appeal

e. On 28 July 1975, he received NJP under Article 15, UCMJ, for failing to go to his place of duty on or about 24 July 1975.

- his punishment consisted of forfeiture of \$90.00 pay for one month
- he was provided the opportunity to seek counsel, acknowledged his rights and decline a trial by court-martial
- he did not appeal

f. On 31 December 1975, he received NJP under Article 15, UCMJ, for being drunk and disorderly in the Fort Sill MP Station, in uniform on or about 18 December 1975.

- his punishment consisted of reduction to the grade of private first class/PFC; forfeiture of \$50.00 pay for one month and 14 days extra duty
- he was provided the opportunity to seek counsel, acknowledged his rights and decline a trial by court-martial
- he did not appeal

h. On 15 September 1977, he received NJP under Article 15, UCMJ, for sleeping during guard duty on or about 10 September 1977.

- his punishment consisted of forfeiture of \$85.00 pay for one month, (suspended for 90 days); reduction to the grade of private first class/PFC/E3, (suspended for 90 days); and extra duty for 14 days.

- he was provided the opportunity to seek counsel, acknowledged his rights and decline a trial by court-martial
- he did not appeal

i. His DD Form 458 (Charge Sheet), shows in part the following:

(1) Charge I, Violation of the UCMJ, Article 86, specification: in that the applicant did on or about 28 November 1977, without authority absent himself from his unit.

(2) Charge II, Violation of the UCMJ, Article 92, Specification: In that the applicant on or about 30 November 1977, violated a lawful general regulation, to wit: Paragraph 5-26 (11), Fort Hood, Supplement 1 to Army Regulation 190-11 (Physical Security of Arms, Ammunition, and Explosives), 29 August 1977, by having in his wall locker five MK2A4 Primers.

j. On 14 August 1978, the applicant consulted with legal counsel and was advised of the basis for his contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of an Under Other than Honorable Conditions Discharge if his request was approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request, he acknowledged:

(1) He acknowledged he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He also understood that submitting this request for discharge he acknowledge that he is guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

(2) He had been advised and understand the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he will be deprived of many or all Army benefits that he may be ineligible for many, or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

(3) He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(4) He also understood that he may, up until the date the discharge authority approves his discharge, withdraw his acceptance of this discharge.

k. On 24 April 1978, the immediate commander/ intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an UCOTHC Discharge Certificate.

l. On 27 April 1978, consistent with the chain of command recommendations, the separation authority approved the applicant's elimination from the service pursuant to AR 635-200, Chapter 10 and ordered the issuance of an UOTHC Discharge Certificate and the applicant's reduction to private/E-1.

m. On 4 May 1978, he was discharged from active duty with an UOTHC characterization of service. His DD Form 214 shows he completed 2 years, 9 months, and 28 days of active service with 129 days lost time from 27 November 1977 to 4 April 1978. He was assigned separation code JFS (For the Good of the Service) and the authority and reason for separation listed as AR 635-200, Chapter 10, with reentry code 3B.

n. In a prior request, ABCMR Docket Number AR20120022597, 30 July 2013, the Board denied the applicant's request. The Board determined that the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of his records of the individual concerned.

o. In a prior reconsideration request, ABCMR Docket Number AR20210016018, 27 June 2022, the Board denied the applicant's request. The Board determined that the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20120022597 on 30 July 2013. A medical review was included in the Board's decision as well the clemency and mental health memoranduma.

6. The applicant does not provide any supporting documentation or evidence regarding his claim of mental health issues.

7. Due to the applicant's claim of mental health issues, this case is being sent to the Army Review Board's Agency for a medical review.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) character of service. He contends mental health conditions are related to his request. 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 31 October 1972; 2) The applicant was found AWOL from 20-24 February 1973; 3) The applicant received nonjudicial punishments between April 1975-Sept 1977 for assaulting an MP, failing to go his place of duty, being drunk and disorderly, and sleeping on duty; 4) The applicant was charged for absenting himself from his unit in November 1977 and having in his wall locker five MK2A4 Primers in August 1977; 5) The applicant was discharged on 4 May 1978, Chapter 10, For the Good of the Service. His service was characterized as UOTHC; 6) The ABCMR reviewed and denied the applicants request for an upgrade on 30 July 2013 and 27 June 2022.

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

c. The applicant asserts he was experienced mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. A review of JLV was void of medical documentation related to a service-connected mental health condition, and the applicant does not receive any service-connected disability for a mental health condition. No additional medical documentation was provided for review.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions while on active service, which mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experienced a mental health condition, while he was on active service. The applicant did absent his unit, which could be avoidant behavior and a natural sequelae to some mental health

conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. In addition, the applicant had in his possession military weaponry, which is not a natural sequelae to any mental health condition. Yet, the applicant contends he was experiencing a mental health condition that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy pattern of misconduct, including some of a violent nature against others (assault), and the findings and recommendation in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting the upgrade of the characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. 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. 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.
 - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but 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 any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service,

in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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 to 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JFS is to be used for RA Soldiers discharged for the administrative discharge conduct triable by court-martial under the provisions of Army Regulation 635-200, chapter 10.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JFS has a corresponding RE Code of "3B."

9. 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//