

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20230013994

APPLICANT REQUESTS:

- reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) discharge.
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two Self-Authored Statements
- Army Board for Correction of Military Records (ABCMR), Docket Number AR20220004746
- Letter of Character
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20170010895 on 4 October 2019
- AR20220004746 on 26 October 2022.

2. The applicant states in effect, the ABCMR Docket Number AR20220004746 contained medical information of another service member which served in the 2000's. The previous request was denied due to allegations of attempted fraud against another service member, with incidents cited in 2005 and 2006.

a. The applicant asserts these allegations are a case of mistaken identity, the other service member was discharged in 1980. He is requesting reconsideration of the denial for a discharge upgrade, citing a mental health condition as the reason for going AWOL. During his Army service, the applicant began experiencing psychosis, including visual and auditory hallucinations. Unaware that these symptoms were signs of Schizophrenia,

the applicant felt lost and uncertain. Although he intended to serve for 30 years, the severity of his condition made it impossible. A Colonel suggested seeing a psychiatrist, but the applicant, fearful and uninformed, chose to leave without permission, resulting in a bad character discharge.

b. The applicant is in a court mandated treatment facility after being found guilty, but not guilty by reason of insanity since 1989. He believes that there is ample evidence in his service records indicating his is psychiatric instability and subsequent diagnosis of Schizophrenia in recent years, the applicant has been compliant with mental health treatment, remaining psychiatrically stable while living in an Assisted Living Facility since 2022. He follows the rules, pays rent, and gets along with others. The applicant is committed to staying on medication, which has helped him become a responsible and respectful person. The negative mark on his military record deeply troubles him, as he originally intended to serve honorably. He acknowledges his mistake in leaving the military but ask for consideration of his mental state at that time. The applicant has since been a law-abiding citizen and request a reconsideration of his discharge upgrade.

3. The applicant provides:

a. A copy of ABCMR Docket Number AR20220004746 dated 26 October 2022 shows, an error was found by the applicant. He believes during the medical advisory another service member's information was provided and used during the Board's decision.

b. A character letter from Ms. A.R states, the applicant has been a resident of the Commonwealth Royale Guest home for the past 2 years. He has been compliant with the rules and remains in good standing.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 17 July 1979.

b. The service record contained two DA Forms 4187 (Personnel Action) which show the applicant's duty status changed as follows:

- 1 August 1980 - Present for Duty (PDY) to Absent Without Leave (AWOL)
- 30 August 1980 - AWOL to Dropped from Rolls (DFR)

c. A DA Form 2496 (Disposition Form) dated 1 October 1980 shows the applicant understood that if he wished to undergo a medical examination prior to his discharge he must submit a request to the Commander. The applicant's election indicated he did not request a physical examination prior to his discharge.

d. On 2 October 1980, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant appeared to have the mental capacity to understand and participate in the proceedings. The applicant was mentally responsible.

e. A DD Form 458 (Charge Sheet) shows on 21 October 1980, court-martial charges were preferred on the applicant for one specification of AWOL from on or about 1 August 1980 and the through date was not included.

f. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

g. He was discharged on 24 November 1980, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 11 days of active service and 57 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge Conduct Triable by a Court-Martial," with reentry code 3 & 3b. It also shows he was awarded or authorized the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

5. On 3 January 1997, 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.

6. On 4 October 2019, the ABCMR rendered a decision in Docket Number AR20170010895. The Board determined the applicant did not provide character witness statements or evidence of post-service achievements for the Board to consider. Based upon the short term of honorable service completed prior to a lengthy period of AWOL, as well as the AWOL offense only ending by apprehension by civilian authorities, the Board agreed that the applicant's discharge characterization was warranted as a result of the misconduct.

7. On 26 October 2022, the ABCMR rendered a decision in Docket Number AR20220004746. The Board concurred with the medical advisory finding although the applicant received a behavioral health (BH) diagnosis and reported a history of hazing, bullying, assault, and financial hardship, these factors do not mitigate his misconduct. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no post-service achievements or character letters of support to weigh a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, the Board denied relief.

8. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is Discharged for the good of the service or in lieu of trial by court-martial.

9. 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.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) 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 in the Regular Army on 17 July 1979.
- A DD Form 458 (Charge Sheet) shows on 21 October 1980, court-martial charges were preferred on the applicant for one specification of AWOL from on or about 1 August 1980 and the through date was not included.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
- He was discharged on 24 November 1980, under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 1 year, 2 months, and 11 days of active service and 57 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "Administrative Discharge Conduct Triable by a Court-Martial," with reentry code 3 & 3b.

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 is requesting reconsideration of the denial for a discharge upgrade, citing a mental health condition as the reason for going AWOL. During his Army service, the applicant began experiencing psychosis, including visual and auditory hallucinations. Unaware that these symptoms were signs of Schizophrenia, the applicant felt lost and uncertain. Although he intended to serve for 30 years, the severity of his condition made it impossible. A Colonel suggested seeing a psychiatrist, but the applicant, fearful and uninformed, chose to leave without permission, resulting in a bad character discharge. The applicant is currently in a court mandated treatment facility after being found guilty, but not guilty by reason of insanity since 1989. He believes that

there is ample evidence in his service records indicating his psychiatric instability and subsequent diagnosis of Schizophrenia in recent years, the applicant has been compliant with mental health treatment, remaining psychiatrically stable while living in an Assisted Living Facility since 2022. He follows the rules, pays rent, and gets along with others. The applicant is committed to staying on medication, which has helped him become a responsible and respectful person. The negative mark on his military record deeply troubles him, as he originally intended to serve honorably. He acknowledges his mistake in leaving the military but asks for consideration of his mental state at that time. The applicant has since been a law-abiding citizen and requests a reconsideration of his discharge upgrade.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation showing on 2 October 1980, he underwent a mental status evaluation. The evaluation indicates, the applicant evidenced no significant mental illness, had the mental capacity to understand and participate in the proceedings, and was found mentally responsible.

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. However, the applicant submitted medical documentation with his application for his previous request to the board indicating a long history of mental health services. An evaluation dated 1 June 2021, diagnosed him with Schizophrenia, Alcohol Use Disorder, Severe, (In sustained full remission, in a controlled environment), Cannabis Use Disorder, Severe, (In sustained full remission, in a controlled environment), Cocaine Use (In sustained full remission, in a controlled environment). A second evaluation dated 21 April 2004, diagnosed him with Schizophrenia, Paranoid Type, and Polysubstance Abuse (in institutional remission).

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence 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 (Schizophrenia).

(2) Did the condition exist or experience occur during military service? Yes. There are no medical documents evidencing the applicant was diagnosed with a behavioral health condition during military service. However, the applicant provides medical documentation that confirms he is diagnosed with Schizophrenia. Based on the trajectory of the disorder, the symptoms typically present in late adolescence or early adulthood which is consistent with the applicant's indication that he was experiencing

prodromal symptoms of the disorder during military service. Prodromal Schizophrenia is the earliest stage or the initial signs of the illness, which typically occurs prior to the active stage of the disorder and presents with changes in personality and behavior. The symptoms often include dysregulated behaviors, nervousness, anxiety, depression, difficulty concentrating, isolation, lack of appropriate personal hygiene, bizarre behaviors, and conduct problems. It is likely the applicant was experiencing the prodromal stage, of what was later diagnosed as Schizophrenia, when he was in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to one specification of AWOL. Given the nexus between Schizophrenia and dysregulated behaviors, it is likely the applicant's BH condition contributed to the behavior (AWOL) that led to his discharge.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation packet is not available for review. However, other evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical provider's finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Therefore, the Board determined that while his service did not rise to the level required for an honorable characterization (given his AWOL), a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Dockets Number AR20170010895 on 4 October 2019 and AR20220004746 on 26 October 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the DD Form 214 for the period of service ending 24 November 1980 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. 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. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

4. 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.

5. 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.

6. 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.

7. 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//