

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230014011

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service to honorable, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 22 January 1963

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. The applicant states he made a mistake going absent without leave for only a few days. He was placed in the stockade for an unreasonably excessive period of time and suffered severe treatment at the hands of the guards and inmates. The experience resulted in considerable mental, and at times, physical suffering due to repeated assaults. He suffers from post-traumatic stress disorder (PTSD) as a result. Since his discharge, he has been diagnosed with Autism Spectrum Disorder (Aspergers Syndrome) which he unknowingly had his whole life. He was unable to be successful in the Army or get along in the stockade because of this affliction.
3. The applicant's official military personnel file (OMPF) is unavailable for review at this time. Despite the lack of an available OMPF, the applicant provides a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of the applicant's petition.
4. The applicant's DD Form 214 shows he entered active duty on 16 May 1962, for a 3-year period. He was discharged on 22 January 1963, under the provisions of Army Regulation (AR) 635-208 (Personnel Separations – Discharge - Unfitness). His

characterization of service was under honorable conditions (general), with separation program number 28B (unfitness-frequent incidents of a discreditable nature with civil or military authorities). He was credited with 3 months and 29 days of net service this period, with 130 days of lost time.

5. Regulatory guidance, in effect at the time, stated that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. An undesirable discharge was normally issued.

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment are related to his request. More specifically, the applicant asserts that after going absent without leave (AWOL) he was put in the stockade and 'suffered due to severe treatment at the hands of the guards and other inmates.' In effect, the applicant asserts that he suffered from PTSD as a result of his time in the stockade and that his diagnosis of Autism, which did not occur until later in life, impaired his ability to get along with the inmates and guards in the stockade which resulting in mental and physical suffering due to repeated physical assaults. 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's official military personnel file (OMPF) is unavailable for review at this time, 2) the applicant's DD Form 214 shows he entered active duty on 16 May 1962. He was discharged on 22 January 1963 under the provisions of Army Regulation (AR) 635-208 (Personnel Separations-Discharge-Unfitness). His characterization of service was under honorable conditions (general) with a separation program number 28B (unfitness-frequent incidents of a discreditable nature with civil or military authorities).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV was void of medical information.

e. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) characterization of service. On his DD Form 149, the applicant indicated that PTSD, Other Mental Health Issues, and Sexual Assault/Harassment are related to his request. His records were void of any medical documentation while in service or post discharge. There is no documentation available regarding the applicant's assertion of military sexual trauma (MST). Moreover, the specific facts and circumstances that led to his discharge are unavailable for review. However, the applicant contends that PTSD, Other Mental Health Issues, and Sexual Assault/Harassment are related to his discharge, and his assertion alone is worthy of the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced PTSD, Other Mental Health Issues, and MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant's records were void of any in-service or post-discharge medical treatment documentation. While there is no evidence to support his assertion of PTSD and Other Mental Health Issues, the applicant's self-assertion alone merits consideration by the Board. Additionally, under Liberal Consideration, the applicant's self-assertion alone is sufficient to establish that he was a victim of MST. The specific facts and circumstances that led to the applicant's discharge are unavailable for review though it is acknowledged that the applicant reported in his self-statement that he had gone AWOL for a few days while in-service. Although there is an association between avoidance behaviors and sexual trauma, which typically provides a basis for BH mitigation based on AWOL due to MST, given the lack of information regarding his discharge in relation to his assertion of MST, a nexus cannot be established at this time. As such, BH mitigation is unclear.

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 medical review, the Board concurred with the advising official finding the applicant's records were void of any medical documentation while in service or post discharge. The opine noted, there is no documentation available regarding the applicant's assertion of military sexual trauma (MST).

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for 130 days. The Board found the specific facts and circumstances that led to the applicant's discharge are unavailable for review. The applicant provided no post service achievements or character letters of support to weigh a clemency determination. The Board noted, the applicant was discharged and provided an under honorable conditions (general) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 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, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. 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 regulation provides:
 - a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

b. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. AR 635-200 (Personnel Separations – Enlisted Personnel), 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 had 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 is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

5. AR 635-208 (Personnel Separations – Discharge – Unfitness), 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.

6. 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 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.

7. 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, 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.

//NOTHING FOLLOWS//