

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230014138

APPLICANT REQUESTS: in effect, upgrade of his characterization of service from under honorable conditions (general).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 17 October 2023
- self-authored statement
- two DD Forms 214 (Report of Separation from Active Duty), 9 August 1972
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 9 August 1972
- letter, from [REDACTED] Veterans' Service Commission, 11 April 2024
- medical documentation

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 he initially received an upgraded discharge under President Carter's Special Discharge Review Program. He is requesting an individual review of his records and a discharge upgrade. He is unsure if his previously upgraded discharge has since reverted back to the under other than honorable conditions under President Ronald Reagan, or if he still has an under honorable conditions (general) discharge.

a. When he enlisted in the Army, he wanted to be a Soldier. He was first told he could not enlist due to an eye condition and a congenital lung condition; however, he was able to complete basic training and training school with no problems. He was stationed at Fort Knox, KY close to his home. He relied heavily on his transportation from his sister and her husband, and on a weekend pass when it was time to go to his bus station, his transportation was unavailable due to his nephew being at the emergency room. He called his unit and informed them he was running late.

b. When he had returned back to his unit, he received an article 15, forfeited his pay, and received extra duty. He felt degraded, horrible, and could not believe he was treated so badly, that he ended up walking away. He tried to get as far as he could. He never wanted to associate with the military due to the way he felt abused by the Army.

c. He was found by the Federal Bureau of Investigation (FBI) and returned to military control. His discharge has haunted him to this day. He had a poor attitude, fell into alcoholism, and suffered depression. He has not been able to get past his negative feelings on how the military treated him, when he knows he did the right thing by informing his command of his lateness.

3. On his DD Form 293, he annotates other mental health is related to his request.

4. The applicant was inducted in the Army of the United States on 4 February 1971. He was awarded the military occupational specialty of 63C (Track Vehicle Mechanic) and the highest rank he attained was private first class/E-3.

5. His DA Form 20 (Enlisted Qualification Record) shows he was reported as absent without leave (AWOL) from on or about 12 July 1971 until on or about 7 December 1971 and from on or about 8 December 1971 until on or about 16 July 1972.

6. Documentation from the U.S. Department of Justice, FBI, dated 6 December 1971, shows the FBI apprehended the applicant on 24 November 1971.

7. Court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of AWOL from:

- on or about 12 July 1971 and remained AWOL until on or about 7 December 1971
- on or about 8 December 1971 and remained AWOL until on or about 17 July 1972

8. He consulted with legal counsel on 26 July 1972, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to submit a statement in his own behalf, referencing his late arrival to his unit and punishments given from his unit; although he contacted his chain of command and informed them of his late arrival. He additionally stated he left again after his punishment and requested a discharge due to wanting to assist his mother financially and he was unable to adjust to the military way of life.

9. On 27 July 1972, the applicant's immediate and intermediate commanders recommended approval of his request for separation and further recommended issuance of an undesirable discharge.

10. The separation authority approved the applicant's request for discharge for the good of the service on 2 August 1972. He further directed the applicant be furnished an Undesirable Discharge Certificate and reduced to the lowest enlisted grade of E-1.

11. The applicant's DD Form 214 shows he was discharged on 9 August 1972, under the provisions of AR 635-200, for the good of the service, in the grade of E-1. His characterization of service was under conditions other than honorable with separation program number 246 and reenlistment code RE-3B. He was credited with 6 months, and 1 day of net active service this period, with 371 days of lost time.

12. On 21 July 1977, the Office of the Adjutant General and the Adjutant General Center upgraded the applicant's discharge from under conditions other than honorable to under honorable conditions (general) with an effective date of 31 May 1977.

13. The applicant's reissued DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, he received a separation program designator code of KCR (Department of Defense (DoD) Special Discharge Review Program (SDRP)) and an under honorable conditions (general) characterization of service.

14. On 23 February 1979, the Office of the Adjutant General and the Adjutant General Center, informed the applicant his previously received discharge upgrade to under honorable conditions (general) had not been affirmed. Stating the Board determined

that he did not qualify for an upgrade and because of a new law, he would not be able to use the discharge to qualify for benefits under the Veterans Administration (VA). He was issued a DD Form 215 (Correction to DD Form 214).

15. The applicant provides medical documentation showing but not limited to: his prescribed medications, vaccinations, and medical diagnosis, highlighted specifically showing his anxiety diagnosis with an onset date of 19 July 2018. Additionally, a letter from [REDACTED] a Veterans' Service representative, requesting a discharge upgrade for the applicant due to his diagnosed anxiety and generalized anxiety disorder.

16. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service. An under conditions other than honorable character of service is normally considered appropriate.

17. Public Law 95-126 was enacted in October 1978. This legislation required the Service Departments to establish historically-consistent uniform standards for discharge reviews. Reconsideration of all discharges previously upgraded under the DoD SDRP was required using these uniform standards. Individuals whose DoD SDRP upgrades were not affirmed upon review under these historically-consistent uniform standards were not entitled to Department of Veterans Affairs benefits unless they had been entitled to such benefits before their DoD SDRP review.

18. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service. On his DD Form 293, he annotates 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 was inducted in the Army of the United States on 4 February 1971.
- His DA Form 20 (Enlisted Qualification Record) shows he was reported as absent without leave (AWOL) from on or about 12 July 1971 until on or about 7 December 1971 and from on or about 8 December 1971 until on or about 16 July 1972.
- Documentation from the U.S. Department of Justice, FBI, dated 6 December 1971, shows the FBI apprehended the applicant on 24 November 1971.

- Court-martial charges were preferred against the applicant, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of AWOL from on or about 12 July 1971 until on or about 7 December 1971 and from on or about 8 December 1971 until on or about 16 July 1972.
- He consulted with legal counsel on 26 July 1972, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service).
- The applicant's DD Form 214 shows he was discharged on 9 August 1972, under the provisions of AR 635-200, for the good of the service, in the grade of E-1. His characterization of service was under conditions other than honorable with separation program number 246 and reenlistment code RE-3B. He was credited with 6 months, and 1 day of net active service this period, with 371 days of lost time.
- On 21 July 1977, the Office of the Adjutant General and the Adjutant General Center upgraded the applicant's discharge from under conditions other than honorable to under honorable conditions (general) with an effective date of 31 May 1977.
- The applicant's reissued DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, he received a separation program designator code of KCR (Department of Defense (DoD) Special Discharge Review Program (SDRP)) and an under honorable conditions (general) characterization of service.
- On 23 February 1979, the Office of the Adjutant General and the Adjutant General Center, informed the applicant his previously received discharge upgrade to under honorable conditions (general) had not been affirmed. Stating the Board determined that he did not qualify for an upgrade and because of a new law, he would not be able to use the discharge to qualify for benefits under the Veterans Administration (VA). He was issued a DD Form 215 (Correction to DD Form 214).

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, "when he enlisted in the Army, he wanted to be a Soldier. He was first told he could not enlist due to an eye condition and a congenital lung condition; however, he was able to complete basic training and training school with no problems. He was stationed at Fort Knox, KY close to his home. He relied heavily on his transportation from his sister and her husband, and on a weekend pass when it was time to go to his bus station, his transportation was unavailable due to his nephew being at the emergency room. He called his unit and informed them he was running late. When he had returned to his unit, he received an article 15, forfeited his pay, and received extra duty. He felt degraded, horrible, and could not believe he was treated so

badly, that he ended up walking away. He tried to get as far as he could. He never wanted to associate with the military due to the way he felt abused by the Army. He was found by the Federal Bureau of Investigation (FBI) and returned to military control. His discharge has haunted him to this day. He had a poor attitude, fell into alcoholism, and suffered depression. He has not been able to get past his negative feelings on how the military treated him, when he knows he did the right thing by informing his command of his lateness.”

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 condition during his time in service.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. VA electronic medical records available for review indicate the applicant is only treated by the VA for his various medical conditions, not for any mental health issues. The applicant was screened via the VA for any mental health concerns on 26 January 2017, since he reported disrupted sleep, no concerns were noted, and he did not evidence any symptoms of anxiety or depression. The applicant provides medical documentation from his primary care medical provider that lists a diagnosis of Anxiety Disorder, Unspecified, per the applicant’s self-reported symptoms. The documentation specifically indicates an onset date of 19 July 2018; several decades post-military service.

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. 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 medical record indicating he has been treated for any mental health condition. The applicant provides medical documentation from his primary care provider that lists a diagnosis of Anxiety Disorder, Unspecified.

However, the documentation specifically indicates an onset date of 19 July 2018, which is several decades post-military service and would not provide mitigation.

h. Per Liberal Consideration, the applicant's assertion of OMH is sufficient to warrant consideration by the Board.

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 short term of honorable service completed prior to the misconduct leading to the applicant's separation, and the lack of mitigation for the misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

2/13/2025

X

CHAIRPERSON

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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service 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 conditions other than honorable is normally considered appropriate.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

c. 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.

3. 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 (PTSD); 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.



4. 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//