

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20230014318

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 relief is warranted because he suffered from alcohol and drug addiction while in the Army. Many people drank and encouraged others to drink.
3. On his DD Form 149, the applicant notes other mental health issues are related to his request.
4. On 16 June 1978, the applicant enlisted in the Regular Army. Upon completion of initial entry training, he was awarded military occupational specialty 63B (Power Generator and Wheel Vehicle Mechanic). The highest grade he attained was E-4.
5. On 20 July 1979, the applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for absencing himself from his place of duty, on or about 19 July 1979. His punishment included reduction to E-2, forfeiture of \$113.00 pay for one month, and 14 days restriction and extra duty.
6. On 20 January 1981, the applicant received NJP under Article 15 of the UCMJ, for operating a vehicle in a drunk manner, on or about 4 December 1980. His punishment included reduction to E-3 and forfeiture of \$125.00 pay for two months.
7. On 20 May 1981, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 24 May 1981.

8. On 27 May 1981, the applicant was reported as AWOL a second time, and remained absent until he returned to military control on 8 June 1981.
9. On 11 June 1981, the applicant was reported as confined by civil authorities. Upon his release, he went AWOL a third time on 16 June 1981. He returned to military control on 24 June 1981.
10. On 2 July 1981, the applicant received NJP under Article 15 of the UCMJ, for going AWOL on three occasions. His punishment included reduction to E-2, forfeiture of \$250.00 and 30 days confinement.
11. On 10 July 1981, the applicant was reported as confined civil authorities a second time, and remained absent until he returned to military control on 30 July 1981.
12. On 15 October 1981, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military control on 21 January 1982.
13. On 2 February 1982, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
14. Court-martial charges were preferred against the applicant on 4 February 1982, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from on or about 15 October 1981 to 21 January 1982.
15. On 8 February 1982, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He submitted a statement in his own behalf stating he went AWOL due to a serious drinking problem and financial issues. He believed that being at home with his parents would help him quit drinking.

16. On 9 February 1982, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an UOTHC discharge. The commander noted that the applicant confessed to a drinking problem and his negative attitude towards the Army prevented his rehabilitation.

17. By legal review on 11 February 1982, the applicant's separation action was found to be legally sufficient for further processing.

18. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 11 February 1982, and directed his reduction to the lowest enlisted grade with issuance of an UOTHC Discharge Certificate.

19. The applicant was discharged accordingly on 10 March 1982. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10 for conduct triable by court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code JFS and Reentry Code 4. He completed 3 year, 4 months, and 1 day of net active service this period with 147 days of lost time.

20. On 14 March 2024, the ABCMR staff requested that the applicant provide medical documents to support his other mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

21. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

22. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

23. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that he had alcohol and drug addiction. 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 16 June 1978 as a 63B (Power Generator and Wheel Vehicle Mechanic), 2) the applicant received three Article 15s between 20 July 1979 and 02 July 1981 for absencing himself from his place of duty, operating a vehicle in a drunk manner, and going absent without leave (AWOL) one three occasions. Of note, at the time of his last incident of AWOL, the applicant was confined by civil authorities on 11 June 1981 and upon his release went AWOL, 3) the applicant was reported as confined by civil authorities a second time on 10 July 1981 and remained absent until he returned to military control on 30 July 1981, 4) following his confinement, the applicant had another episode of AWOL on 15 October 1981 until he returned to military control on 21 January 1982, 5) the applicant was medically cleared for administrative separation on 02 February 1982, 6) court-martial charges were preferred against the applicant on 04 February 1982 for one specification of going AWOL from 15 October 1981 to 21 January 1982, 7) the applicant was discharged on 10 March 1982 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for conduct triable by court-martial.

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. A Report of Medical Examination dated 02 February 1982 was completed in conjunction with his Chapter separation. Item number 42, psychiatric, was documented as normal on clinical evaluation and he was medically cleared for separation. The applicant's self-statement in support of his request for discharge dated 08 February 1982 noted that he reported having a serious drinking problem and financial problems. He stated that he was hopeful that being at home and the assistance of his parents would help him to quit drinking. The applicant also wrote that he felt if he had not left that he was 'heading and on the verge of a nervous breakdown.' There were no other medical records available for review.

d. A review of JLV was void of medical information. Of note, his UOTHC discharge renders him ineligible for VA services.

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

experience during his time in service that mitigated his misconduct. Although the applicant admitted to having a problem with alcohol use at the time of discharge, alcohol and substance use disorders do not constitute mitigating conditions. There were no in-service post-discharge BH records available for review. However, he contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 that his misconduct was related to Other Mental Health Issues.

(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? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. Although there is evidence that the applicant reported problems with alcohol use while in service, alcohol and substance use disorders do not constitute mitigating conditions and there is no evidence the applicant has ever been diagnosed or treated for a BH mitigating condition. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The available evidence shows the applicant was charged with commission of offense(s) punishable under the UCMJ with a punitive discharge. After being charged, he 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 concurred with the medical official's determination finding insufficient evidence to support that the applicant had a condition or experience that may mitigate his misconduct. Also, the applicant provided

no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

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.

8/14/2024

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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. Title 10, U.S. Code, Section 1556, 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. 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.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for

discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including 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 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.

6. 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//