

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 July 2024

DOCKET NUMBER: AR20230014425

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (General)
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- State of South Carolina Identification Card
- Enlistment documents (8-page extract)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Psychiatric Medical Assessment Orders and Service Notes

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 was a good Soldier for 29 months until the beginning of his undiagnosed serious mental illness led to his discharge UOTHC. His current diagnosis of schizoaffective disorder began with symptoms of severe anxiety and depression while he was serving in the Army. Not understanding what was happening, he began self-medicating and making decisions that were self-destructive including the behavior of going absent without leave (AWOL), which led to his less than honorable discharge. He has struggled with many years of subsequent self-medicating with substances leading to homelessness, hospitalizations, and brief incarcerations. He finally received an accurate diagnosis and treatment; and with the help of loved ones, is getting his life back on track. Upgrading his discharge will support him in maintaining his mental and physical health with better access to healthcare. In a perfect world, he would be retired from the Army as he was hoping to make his service a lifelong career.

3. On 1 April 1998, the applicant enlisted in the Regular Army for a period of 3 years. He was assigned to a unit at Fort Hood, TX. The highest rank/grade he held while serving was private first class (PFC)/E-3.

4. The applicant's unit changed his duty status from:

- Present for Duty (PDY) to AWOL on 4 November 1999
- AWOL to Dropped from Rolls (DFR) on 4 December 1999 and reported him as a deserter to law enforcement agencies
- DFR to Attached/PDY on 24 March 2000 when he was apprehended by civil authorities and returned to military control

5. The applicant declined the opportunity to undergo a separation medical examination on 30 March 2000.

6. A DD Form 458 (Charge Sheet) shows on 6 April 2000, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for on or about 4 November 1999, without authority, absenting himself from his organization and remaining so absent until he was apprehended on or about 24 March 2000.

7. On 7 April 2000, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit statements in his own behalf and reiterated his desire not to undergo a separation medical examination. The applicant's immediate commander recommended approval of his request.

8. On 30 August 2000, the applicant's request for separation underwent a legal review and there were no objections to further processing it in accordance with the unit commander's recommendations.

9. On 8 September 2000, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced to the lowest enlisted grade prior to the execution of the discharge.

10. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 27 September 2000, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Program Designator code "KFS" and Reentry Eligibility code "4." He

was credited with completing 2 years, 1 month, and 6 days of active service. He had time lost due to AWOL from 4 November 1999 until 23 March 2000. He did not complete his first full term of service.

11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting 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 1 April 1998.
- A DD Form 458 (Charge Sheet) shows on 6 April 2000, court-martial charges were preferred against the applicant for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for on or about 4 November 1999, without authority, absenting himself from his organization and remaining so absent until he was apprehended on or about 24 March 2000.
- On 7 April 2000, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial.
- Orders and the applicant's DD Form 214 show he was discharged on 27 September 2000, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Program Designator code "KFS" and Reentry Eligibility code "4." He was credited with completing 2 years, 1 month, and 6 days of net active service this period. He had time lost due to AWOL from 4 November 1999 until 23 March 2000. He did not complete his first full term of service.

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 was a good Soldier for 29 months until the beginning of his undiagnosed serious mental illness led to his discharge UOTHC. His current diagnosis of schizoaffective disorder began with symptoms of severe anxiety and depression while he was serving in the Army. Not understanding what was happening, he began

self-medicating and making decisions that were self-destructive including the behavior of going absent without leave (AWOL), which led to his less than honorable discharge. He has struggled with many years of subsequent self-medicating with substances leading to homelessness, hospitalizations, and brief incarcerations. He finally received an accurate diagnosis and treatment; and with the help of loved ones, is getting his life back on track. Upgrading his discharge will support him in maintaining his mental and physical health with better access to healthcare. In a perfect world, he would be retired from the Army as he was hoping to make his service a lifelong career”.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant declined the opportunity to undergo a separation medical examination on 30 March 2000.

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 indicating a long history of mental health services, incarceration, homelessness, and psychiatric hospitalization. A psychiatric assessment dated 30 September 2019, indicates the applicant had not presented for services with the provider since September 2017 due to incarceration. The assessment documents the applicant’s history of over ten psychiatric hospitalizations, and further indicates that he was prescribed antipsychotic medication and diagnosed with Schizoaffective Disorder, depressive type. Follow-up psychiatric documentation dated 2 June 2022 and 12 July 2023, indicate the applicant continues to be diagnosed with Schizoaffective Disorder, depressive type, and is treated with antipsychotic medication.

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 (Schizoaffective Disorder).

(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 Schizoaffective Disorder. 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 Schizoaffective Disorder is the earliest stage or the initial signs, which typically occur

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 Schizoaffective Disorder, 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 absenting himself from his organization and remaining so absent until he was apprehended. Given the nexus between Schizoaffective Disorder and dysregulated behaviors, it is likely the applicant's BH condition contributed to the behavior (AWOL) that led to his discharge.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged absenting himself from his unit from 4 November 1999 to 24 March 2000, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned. The Board reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant's behavioral health condition in service mitigated his misconduct. Based on the applicant's contention, the Board granted relief.

2. 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 Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 27 September 2000 to show an under honorable conditions (General) characterization of service.

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, 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. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. 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. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. 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.

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 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.

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, 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//