

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230014612

APPLICANT REQUESTS: the applicant defers to counsel for submission of his request, statement, and evidence.

COUNSEL'S REQUEST, STATEMENT, AND EVIDENCE: correction of the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 21 February 1980, to show he was discharged with an honorable discharge instead of under other than honorable conditions (UOTHC) discharge. In addition to show in:

- Item 26 (Separation Code): "JFS" to "JFF"
- Item 28 (Narrative Reason for Separation): Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of The United States)
- Memorandum subject: Request for Discharge for the Good of the Service, dated 11 January 1980
- DD Form 214 (bad copy-illegible)
- Kurta Memorandum, dated 25 August 2017
- Brief in support of application for discharge upgrade
- Self-authored letter
- Two character references

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. Counsel states in his legal brief, in effect:

a. The applicant is requesting an upgrade to his characterization of service from UOTHC to honorable, to change his narrative reason for separation to secretarial authority and to change his separation code to reflect accordingly. He experienced being singled-out while assigned in Germany. He received harsher treatment and heavier restrictions than his peers. Some of his basic needs were taken away, like showering and eating properly, others in the unit were not given such limitations.

b. Upon his return to the United States, a new lieutenant was assigned to his unit that only made things worse for him. This resulted in him repeatedly requesting to be transferred to a different unit in hopes that his life would improve but was constantly denied. He lost hope of a better experience in the Army and the possible continuation of his service. He also endured threats and inappropriate behavior from his lieutenant which did not align with the Army's values of treating others with respect and dignity.

c. Had the applicant received any form of help for the lieutenant's inappropriate behavior and the singling out by his superior, he could have had a positive Army career and would not have neglected his responsibilities. He believed that no one in his command cared about his concerns enough to transfer him, he was left with no choice but to go absent from his unit. Had the problems he experienced been addressed and had he been transferred, he would have continued his military career in a new environment without feeling like he had no other option but to leave. The entire brief in support of his application is available in its entirety for the Board's review.

3. Counsel provides:

a. A self-authored letter from the applicant, in addition to the aforementioned statement, in which he further explains that even at a young age, he wanted to serve in the military. He looked up to his family members that were serving in the military but after the loss of his cousin in Vietnam, he was eager to join. When he was younger, he was sexually abused by one stepfather and physically and mentally abused by another. Although he received counseling, he never really recovered. Once he was 17, he finally convinced his mother to give her consent so he can enlist in the Army. During basic combat training (BCT) he was on duty and decided to sit on his bed for a little while. He fell asleep and received an Article 15 as punishment for dereliction of duty. Upon arrival to his unit, he always made the best attempts to perform his duties in the best possible way, he knew he was not perfect, but he tried his hardest and got along with everyone. After his incarceration for that absent time stated in his previous statement, as he was being processed for separation, he was given three options: to go to trial by court martial and potentially spend three years in Fort Leavenworth, MO, spend the next six months in the Army and ETS or accept an UOTHC discharge. By this point in his

career, he had lost all hope and decided to take the UOTHC discharge, not really understanding what it meant and possibly not caring at the time. He is not proud of the decisions he made then, as they still effect his life 42 years later. He now helps raise money for charities that help many veterans, first responders and health care organizations. He has held long term employment and even owned his own successful business in the past. He is a proud father and grandfather. He is now happily remarried and lives a great life. He cannot change what happened, but he does live with regret. The letter is available in its entirety for the Board's review.

b. Two character references provide the following:

(1) Mr. S. D. states he has known the applicant since 1993. He is hoping for leniency in his case as he has known the applicant as a peer, an employee and friend. He always showed pride in his work, he was not judgmental, and was very humble. He helps those in need, he supports veterans and is a friend to many. He has proven to be responsible, a contributing member to society and someone who deserves a second chance.

(2) Mr. J. R. states he is a Navy, honorably discharged petty officer second class. He met the applicant in 1974 and the two have been best friends ever since. He is aware of the applicants past but is asking for consideration from the Board due to him being an upstanding citizen and very helpful to anyone in need. He further explains that he is a loving family man, and always takes the time to help and support children's hospitals, veterans and various veteran organizations and events.

c. Counsel does not provide any supporting medical health documents to support his mental health claim.

4. The applicant's service record reflects the following:

a. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of The United States) shows he enlisted in the Regular Army on 22 March 1977, for three years.

b. DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) reflect the applicant received the following non-judicial punishments under the provisions of Article 15, UCMJ:

(1) On 17 July 1977, for being derelict in the performance of his duties, a violation of Article 92, UCMJ. His punishment consisted of forfeiture of pay of \$50.00

with \$25.00 of that fine suspended for 14 days, and seven days extra duty. He did not appeal.

(2) On 18 April 1978 for being absent without authority from his appointed place of duty and remained absent until 25 April 1978, a violation of Article 86, UCMJ. His punishment consisted of reduction to PVT/E-1 (suspended for 90 days), forfeitures of pay of \$75.00 of pay, and 14 days extra duty. He did not appeal.

c. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 14 August 1979, present for duty (PDY) to absent without leave (AWOL)
- 13 September 1979, AWOL to dropped from rolls (DFR)

d. DD Form 458 (Charge Sheet) dated 18 September 1979, shows charges were preferred against him for violation of the UCMJ, Article 86, one specification for being without authority on or about 14 August 1979, absent himself from his unit and did remain so absent.

e. DA Form 3836 (Notice of Return of U. S. Army Member from Unauthorized Absence) shows that the applicant was apprehended by civil authorities on 19 December 1979, and returned to military control of the Provost Marshal Office (PMO) in Denver, CO.

f. DA Form 4187 shows the applicant's duty status changed on 20 December 1979, from DFR to PDY.

g. DD Form 458 dated 9 January 1980, shows charges were preferred against him for violation of the UCMJ, Article 86:

- Specification 1: without authority on or about 12 August 1979, absent himself from his unit and did remain so absent on or about 24 August 1979
- Specification 2: without authority on or about 24 September 1979, absent himself from his unit and did remain so absent on or about 19 December 1979

h. In a memorandum subject: Request for Discharge for the Good of the Service, dated 11 January 1980, shows the applicant consulted with counsel and voluntarily requested to be discharged under the provisions of Army Regulation (AR) 635-200

(Personnel Separations – Enlisted Personnel), Chapter 10. He further understood and agreed to the following:

- He may request discharge for the good of the service following charge(s) which had been preferred against him under UCMJ, which authorizes the imposition of a bad conduct or dishonorable discharge
- He might be discharged and given an UOTHC discharge
- He might be deprived of many or all Army benefits and he might be ineligible for many or all benefits as a veteran under both Federal and State laws
- He might expect to encounter substantial prejudice in civilian life because of a UOTHC discharge
- He elected to make a statement in his own behalf
- There was no automatic upgrading nor review by a government agency of a less than honorable discharge
- He realized that the act of consideration by either board does not imply that his discharge would be upgraded

i. The applicant, in his statement, states, in effect, no one would listen to what he had to say or even trust him. No one had any interest in helping him. He liked to make his own decisions in his life as there was no one better to care for him than himself, the military life was not for him, and things will only get worse if he stayed in. He had plans to start his own business when he left the Army, so he knew he would be better off if he was no longer serving. If he was given a discharge prior to his offence, that would have prevented him from committing it in the first place.

j. On 11 January 1980, the commander of the U. S. Army Personnel Control Facility, Fort Carson, CO, recommended that the applicant's request for a discharge for the good of the service be approved and that he be issued an UOTHC discharge.

k. On 11 January 1980, the commander of the Headquarters, Law Enforcement Command, Fort Carson, CO, also recommended approval and the issuance on an UOTHC discharge.

l. On 8 February 1980, the separation authority approved the request for the applicant's discharge with an UOTHC. He also directed he be reduced to the lowest possible grade, and that he is excluded from the installation, effective on the day of his discharge.

m. His DD Form 214 for the period ending 21 February 1980, shows he was discharged with an UOTHC discharge, pursuant to Army Regulation 635-200, Chapter

10, Administrative Discharge, Conduct Triable by Court-Martial. He received a separation code of "JFS" and a reentry code of "4". He completed 2 years, 6 months, and 24 days of net active service this period. His grade at the time of discharge was private (E1). He had lost time from 14 August 1979 to 18 December 1979.

5. Due to the applicant's claim of other mental health issues, the case is being forwarded to the Behavioral Health staff at the Army Review Boards Agency.

6. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 21 February 1980 discharge characterized as under other than honorable conditions. On his DD Form 149, he had indicated other mental health issues are related to this request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the Regular Army on 22 March 1977 was discharged on 21 February 1980 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Discharge for the Good of the Service – Conduct Triable by Court Martial.

d. The applicant received an Article 15 on 20 July 1977 for dereliction of duty – failing to remain awake while on Fire/Security duty. He received a second Article 15 on 6 June 1978 for being absent without leave (AWOL) from 18-25 April 1978.

e. A Charge Sheet (DA Form 458) shows the applicant was charged with a new period of AWOL from 24 September 1979 thru 19 December 1979 when he was apprehended by civilian authorities.

f. On 11 January 1980, the applicant voluntarily requested discharge for the good of the service under the provisions of Chapter 10 of AR 635-200. On 18 February 1980, the Commanding General of the 4th Infantry Division (Mechanized) and Fort Carson

approved his request with the directives he be reduced in grade to private (E-01) and issued an Under Other Than Honor Conditions Discharge Certificate.

g. No medical documentation was submitted with the application. The applicant's period of service predates the EMR and there are no encounters in JLV.

h. The applicant asserts that he was physically, mentally, and sexually abused by his stepfather while he was a child. While this certainly would have negatively affected numerous life skills to include socialization and adaptation, it does not fall within the purview of Liberal Consideration due to fact this abuse occurred prior to applicant entering active service.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 a pattern of misconduct leading to the applicant's separation and the findings of 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, separation code and/or narrative reason for separation.

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, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

d. Secretarial Authority, paragraph 5-3 states, in pertinent part, the separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army (SA). Except as delegated by this regulation or by special DA directives, it will be accomplished only by the SA's authority. The separation of any enlisted member of the Army under this authority will be based on an SA determination that separation is in the best interests of the Army.

3. Army Regulation 635-5 (Separation Processing and Documents). 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 REFRAD, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment

- RE code “3” applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code “4” applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

5. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFS" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 10. RE code of “3” is the appropriate corresponding RE code for SPD code "JFS". SPD code “JFF” is the appropriate code for Secretarial Authority.

6. 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 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.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

9. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

10. Title 10, U.S. Code, section 1556 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//