

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20110020731

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his characterization of service from under other than honorable conditions to a more favorable characterization.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110020731 on 3 May 2012.

2. The applicant states, at the time of his incident(s), he was young and stubborn. He did not appreciate where he was and what he was doing. Now he is older, and he would appreciate an upgraded discharge. He is sorry for the mistakes that he made. He was only 19 years old at the time and did not understand how his mistakes would affect his life/future. Additionally, he annotated his application to show that he suffers from other mental health conditions.

3. The applicant enlisted in the Regular Army on 11 April 1980.

4. His DA Form 2-1 (Personnel Qualification Record - Part II), block 18 (Appointments and Reductions) shows the applicant was promoted or reduced in rank/grade on the following dates:

- Private (PV1)/E-1 - 11 April 1980
- Private (PV2)/E-2, - 11 October 1980 / 21 October 1980
- Private First Class (PFC)/E-3 - 11 April 1981
- PV2 - 8 June 1981 / 10 July 1981
- PV1 - 29 June 1982

5. He accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on:

a. 24 February 1981, for being absent without leave (AWOL) from 1 to 11 February 1981. His punishment consisted of, in part, a reduction to PV1/E-1, suspended for 30 days, until 16 May 1981.

b. 26 May 1981, for destroying a military sleeping bag by cutting it with a knife. His punishment consisted of a reduction to PV2/E-2.

6. A DD Form 458 (Charge Sheet) shows, on 21 January 1982, the applicant was charged with being AWOL from his unit at Fort Lewis, WA, from:

- 17 November to 11 December 1981
- 22 to 30 December 1981
- 6 to 14 January 1982

7. His record contains a series of DA Forms 4187 (Personnel Action), which recorded the following duty statuses:

- Present for Duty (PDY) to AWOL - 1 February 1981
- AWOL to PDY - 11 February 1981 (surrendered himself)
- PDY to AWOL - 17 November 1981
- AWOL to PDY - 11 December 1981 (surrendered himself)
- PDY to AWOL - 22 December 1981
- AWOL to PDY - 30 December 1981 (surrendered himself)
- PDY to AWOL - 6 January 1982
- AWOL to PDY - 14 January 1982 (surrendered himself)
- AWOL to Confined by military authorities - 19 January 1982 (apprehended by military authorities)
- Confined by military authorities to PDY - 27 January 1982
- PDY to AWOL - 1 March 1982

8. A military Police Report shows, on 25 May 1982, the applicant was apprehended by Phoenix, Arizona, Police for speeding. His unit confirmed he had gone AWOL on 1 March 1982, and he was dropped from Army rolls on 2 March 1982. He was escorted to Personnel Control Facility, Fort Ord, CA, and he was turned over to military control on 26 May 1982.

9. A DD Form 458 (Charge Sheet) dated 9 June 1982, shows the applicant was charged with violating the UCMJ, Article 86 (AWOL). The following specifications were included:

a. Specification 1: In that the applicant did, on or about 17 November 1981, without authority, absent himself from his unit on or about 11 December 1981.

b. Specification 2: In that he did, on or about 22 December 1982, without authority absent himself from his unit until 30 December 1981.

c. Specification 3: In that he did, on or about 6 January 1982, without authority absent himself from his unit until 14 January 1982.

10. On 9 June 1982, he consulted with legal counsel who advised him of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct discharge or a dishonorable discharge, the maximum permissible punishment authorized under the UCMJ, the possible effects of a request for discharge, and the procedures and rights available to him. Following consultation with legal counsel, he voluntarily requested discharge for the good of the service in lieu of trial by court-martial under the provisions of chapter 10, Army Regulation 635-200 (Personnel Separations - Enlisted Personnel).

a. In his request for discharge, he indicated he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person. He also indicated he understood that by requesting discharge, he was admitting guilt to the charges against him or of lesser-included offenses that also authorized the imposition of a bad conduct discharge or a dishonorable discharge.

b. He further acknowledged he understood if his discharge request were 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.

11. A DA Form 2496 (Disposition Form) shows during his request for discharge he stated that he was AWOL because of family problems and if he were returned to duty, he would go AWOL again.

12. On 14, 15, and 18 June 1982, respectively, his immediate, intermediate, and senior commanders recommended approval of his request for discharge with the issuance of an under other than honorable conditions character of service.

13. On 29 June 1982, the separation authority directed the applicant's reduction to the lowest enlisted grade if applicable, approved his request for discharge under the provisions of chapter 10, Army Regulation 635-200, for the good of the service, and the issuance of an under other than honorable conditions discharge.

14. Accordingly, on 20 July 1982, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of chapter 10, Army Regulation 635-200, in lieu of trial by court-martial, with service characterized as under other than honorable conditions, in the rank/grade of PV1/E-1. This form shows he completed 1 year, 10 months, and 17 days of active service. He also had 153 days of lost time due to being AWOL and in confinement.

15. The applicant provided argument or evidence that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced mental health conditions that mitigate his misconduct. 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 11 April 1980; 2) The applicant had a history of going AWOL starting in February 1981; 3) On 9 June 1982, the applicant was charged with three specifications of going AWOL between 17 November 1981-14 January 1982; 4) The applicant was discharged on 20 July 1982, Chapter 10, in lieu of trial by court-martial, with service characterized as UOTHC. He completed 1 year, 10 months, and 17 days of active service. He had 153 days of lost time due to being AWOL and in confinement.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability.

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

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to a mental health condition. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20110020731 on 3 May 2012.

2/26/2025

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. 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 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.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel.

a. Chapter 10 stated a member who was charged with 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 issued to an individual who was discharged for the good of the service.

b. 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 have been clearly inappropriate.

c. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An under other than honorable conditions discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct. In a case in which an under other than honorable conditions discharge is authorized by regulation, a member may be awarded an honorable or general discharge, if warranted by the circumstances of a specific case.

4. 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.

5. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 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.

7. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//