

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230014981

APPLICANT REQUESTS:

- a. Upgrade of his under other than honorable conditions (UOTHC) to a more favorable discharge that provides eligibility for Department of Veterans Administration (VA) healthcare services.
- b. For pay and allowances, promotions/rank" and performance/evaluations and derogatory information
- c. An appearance before the Board via video/telephone.

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 (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 coerced into enlistment by a judge as a juvenile, due to a youthful criminal incident. He was quickly sent away into an environment far from his home that worsened his personal mental conditions and left him vulnerable to further misguidance at a very young age. He did not stand a chance and was set up for failure with this arrangement. The impact of this experience has affected the rest of his life and almost 50 years later he still suffers its repercussions. He could never obtain the employment or other opportunities that are available to regular citizens as a result. He should not have been forced into military service and then not properly cared for once in. His PTSD and other behavioral health issues were created by the Army and have directly contributed to his continuous use of alcohol and resulting health matters that he can no longer manage today.
3. The applicant does not provide any supporting documentation regarding his claim of PTSD or for any other mental health issues.

4. Although the applicant checked the box in his application for “Pay and Allowances” “Promotions/Rank” and “Performance/Evaluations/Derogatory Information”, it is unclear what specific action the applicant is requesting and why he believes he is entitled to said corrections. Therefore, these issues will not be discussed further in these proceedings.

5. The applicant’s service record shows the following information:

a. DD Form 4 (Enlistment Contract-Armed Forces of the United States), reflects he enlisted in the Regular Army on 19 December 1972.

b. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) reflects he accepted non-judicial punishment under Article 15 of the UCMJ on 10 July 1973:

- for without proper authority, caused damage by attempting to drive a military vehicle, while being locked, military property of the United States, the amount of said damage being in the sum of about \$305.00 on or about 6 June 1973
- his punishment consisted of reduction to private/E-1, forfeiture of \$153.00 per month for 2 months and restriction and extra duty for 45 days.
- he was provided the opportunity to seek counsel
- He appealed his punishment on 26 July 1973. No documents for the response to the appeal were located in his record

c. DA Form 188 (Extract Copy of Morning Report) 19 September 1973 reflects he was absent without leave (AWOL) on 18 September 1973. The date of his return to active duty status is not available.

d. DA Form 2627 reflects he accepted nonjudicial punishment under Article 15 of the UCMJ on 13 September 1973, for the following:

- without authority, failing to go his appointed place of duty at the time prescribed on or about 9 September 1973 and remained absent until on or about 9 September 1973
- for being derelict in the performance of his duties on or about 9 September 1973
- for being, without authority, failing to go his appointed place of duty at the time prescribed on or about 10 September 1973 and remained so absent until on or about 10 September 1973
- his punishment consisted of forfeiture of \$71.00 pay per month for 1 month, and extra duty and restriction for 14 days
- he had to right to present evidence, call witnesses, and to seek legal counsel

- he did not appealed his nonjudicial punishment which was held on 13 September 1973.

f. The Report of Mental Status Evaluation, 25 September 1973 reflects the applicant did not have a significant mental illness, was mentally responsible, able to distinguish right from wrong, was able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

g. DA Form 2627 reflects he accepted nonjudicial punishment under Article 15 of the UCMJ on 29 October 1973:

- for being disrespectful language towards a specialist on 17 September 1973
- without authority, failing to go his appointed place of duty at the time prescribed on or about 17 September 1973
- without authority, absent himself from his unit on or about 18 September 1973 until on or about 19 September 1973
- his punishment consisted of forfeiture of \$163.00 per month for 2 months, extra duty and restriction for 45 days
- He had to right to present evidence, call witnesses, and to seek legal counsel
- he appealed his punishment on 13 November 1973

h. DA Form 2627-2 (Record of appellate or Other Supplementary Actions Under Article 15, UCMJ), 28 November 1973, reflects the applicant appealed his 13 November 1973 nonjudicial punishment. The Assistant Staff Judge Advocate stated that since the applicant's punishment did not appear unjust or disproportionate to the remaining two offenses, he recommended a denial of his request. The commanding officer denied the appeal.

i. DA Form 188, 20 March 1974 reflects he was AWOL on 15 March 1974. The date of his return to active duty status is not available.

j. DA Form 268 (Report for Suspension of Favorable Personnel Actions), 1 April 1974 shows the applicant was pending a summary court-martial (SCM).

k. The applicant's available record is void of a separation packet containing the specific facts and circumstances surrounding his request for separation in lieu of a trial by court-martial or his pending SCM.

l. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial on 11 June 1974. He had a separation program designator (SPD) of 246 and reenlistment code 3B. His service was

characterized as UOTHC. He completed 1 year, 5 months, and 8 days of net active service.

6. On 16 May 2024, a staff member at ARBA, requested the applicant provide medical documents that support his issue of PTSD and other mental health. As of 6 June 2024, no response was provided.

7. 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.

8. 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 (AHLTA), 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 11 June 1974 discharge characterized as under other than honorable conditions. On his DD Form 149, he has indicated that PTSD and Other Mental Health conditions are issues related to his requests. He states:

"I was coerced into enlistment by a Suffolk County N.Y. court judge as a juvenile as a result of a youthful criminal incident. I was quickly sent away into an environment far away from home that only worsened my personal mental condition and left me vulnerable to further misguidedance {sic} at a very young age.

I did not stand a chance and was set up for failure with this arrangement. The impact of this experience has affected the rest of my life and almost 50 years later, still suffer its repercussions. I could never obtain the employment or other opportunities that are available to regular citizens as a result. I should not have been forced into military service and then not properly cared for once in."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the Regular Army on 19 December 1972 and was discharged on 11

June 1974 under the provisions provided in paragraph 10-1 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. It shows 15 days lost under 10 USC § 972.

d. There are no periods of foreign service on his Enlisted Qualification Record (DA Form 20) other than Germany.

e. The applicant received an Article 15 on 10 July 1973 for damaging government property:

“... you did, without proper authority, damage by attempting to drive a military vehicle while being locked, military property of the United States, the amount of said damage being in the sum of about \$305.00. This is a violation of Article 108, UCMJ.”

f. He received a second Article 15 of 13 September 1973 for two episodes of failure to repair.

g. He underwent a mental status evaluation on 25 September 1973. The physician documented a normal examination going on to opine the applicant had no mental illness and met the medical retention standards in chapter 3 of AR 40-501 (Standards of Medical Fitness); was mentally responsible; was able to distinguish right from wrong and adhere to the right; and had the mental capacity to understand and participate in board proceedings.

h. He garnered his third Article 15 on 29 October 1973 for disrespectful language toward a superior enlisted member and two more failures to repair.

i. The applicant's DA Form 20 lists two periods of absence without leave (AWOL): 18 December 1973 (1 day) and 15-28 March (14 days).

j. Submitted medical documentation shows the applicant was evaluated and treated for a variety of minor conditions, including viral gastroenteritis, a right ankle sprain, two viral upper respiratory infections, and rashes. There were no encounters related to or for mental health issues or conditions.

k. Neither the applicant's separation packet nor other documentation addressing his voluntary request for separation under chapter 10 of AR 635-200 was submitted with the application or uploaded into iPERMS.

l. The applicant underwent a pre-separation medical examination on 10 May 1974 at which time the provider documented a normal examination, that the applicant had no significant or interval medical history or conditions, and he was found qualified for separation.

m. JLV shows he is not registered with the VA.

n. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD and Other Mental Health Conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts these conditions existed during his period of Service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no probative evidence submitted, found in the EMR, other electronic records, or in JLV (to include VA endorsement), indicating the applicant has been diagnosed with PTSD or a behavioral health disorder of any kind.

o. In the event the applicant was to have a potentially mitigating diagnosis, it would partially mitigate the misconduct for which he was separated. These conditions are associated with avoidant behaviors and resistance to authority. As such, it would mitigate his failures to repair, periods of absence without leave, and disrespect toward a superior enlisted member. However, these conditions to not interfere with one's abilities to differentiate right from wrong and adhere to the right so cannot mitigate his intentional damage to a military vehicle.

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 service prior to a lengthy pattern of misconduct leading to the applicant's separation, 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.

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, United States Code (USC), 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. Section 1556 of Title 10, USC, 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.

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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable

Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

5. Army Regulation 635-5 (Separation Documents), states, 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 release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code 246 (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

7. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code 246 has a corresponding RE Code of "3B."

8. 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

9. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual

weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

10. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

11. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

12. 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.

13. 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.

14. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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.

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//