

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20230015200

APPLICANT REQUESTS:

- an upgrade to his under other than honorable conditions (UOTHC) discharge to honorable
- A personal appearance before the Board

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, in effect, he is requesting an upgrade of his UOTHC discharge to honorable, so he may qualify for Department of Veterans Affairs (VA) medical care. During his service, he sustained an injury to his ankle, which continues to affect him. He also began experiencing other mental health conditions while on active duty, these issues were not diagnosed, and as a result were left untreated. His character of service has inflicted a negative impact on his life, as he is now experiencing homelessness. He would greatly benefit from VA health care, for his post-traumatic stress disorder (PTSD), bipolar disorder, general anxiety, and other medical concerns that he is unable to seek treatment for, due to his limited resources.
3. The applicant's service record reflects the following:
  - a. He enlisted in the Regular Army on 5 June 1979.
  - b. DA Forms 4187 (Personnel Action Form) reflects the following changes in the applicant's duty status:

- 3 October 1979, present for duty (PDY) to absent without leave (AWOL)
- 1 November 1979, AWOL to dropped from rolls (DFR)

c. DD Form 458 (Charge Sheet), 2 November 1979, shows charges were preferred against him for violation of the Uniform Code of Military Justice (UCMJ), Article 86. On or about 3 October 1979, he, without authority, absent himself from his unit and did remain so absent.

d. DA Form 3835 (Notice of Unauthorized Absence from United States Army), 6 November 1979, shows the Provost Marshal Office in Fort Benning, Georgia, reported the applicant was DFR on 1 November 1979.

e. DA Form 4187, reflects the applicant surrendered to military authorities on 7 November 1979. Subsequently, his duty status changed from DFR to PDY, on 9 November 1979.

f. Orders 198-604, 14 November 1979, reflect he was assigned to the United States Army Personnel Control Facility, United States Army Garrison, in Fort Carson, Colorado (CO) on 7 November 1979, pending disposition instructions from his unit.

g. DA Form 3082-R (Statement of Medical Condition) shows while he was assigned to the control facility, he stated, to the best of his knowledge, there was no change in his medical condition.

h. Forces Command Form 1424 (Commander's Information Sheet), 16 November 1979, is mostly illegible, therefore its complete details cannot be provided for the Board's review. This document provides, in part, the following:

- He claimed he can not cope with the military
- He felt that he was treated unfairly during Advanced Individual Training (AIT)
- He refused his assignment to Germany
- He did not feel he possessed sufficient maturity to successfully continue his service
- He desired to be released from active duty
- He will go AWOL again

i. Memorandum subject: Request for Discharge for the Good of the Service, 19 November 1979, shows his commanding officer recommended the applicant be discharged, and that he be issued a UOTHC Discharge Certificate. He further noted, he had reasonable grounds to believe that, at the time of his misconduct, the applicant was mentally defective, deranged, or abnormal.

j. On 19 November 1979, the applicant submitted a request for discharge for the

good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. This document shows he consulted with his appointed legal counsel and acknowledged that by submitting his request for discharge he was guilty of charges preferred against him that authorized the imposition of a bad conduct or dishonorable discharge. He also stated, he did not desire further rehabilitation and did not wish to continue his military service. He further understood and agreed to the following:

- He indicated in his request he understood he might be discharged under conditions other than honorable and given a UOTHC discharge
- He might be ineligible for many, or all benefits administered by the VA
- He might be deprived of many or all Army benefits
- He might be ineligible for many or all benefits as a veteran under both Federal and State laws
- He acknowledged he might expect to encounter substantial prejudice in civilian life because of a UOTHC discharge
- He elected to submit a statement in his own behalf, this document is illegible, therefore its details cannot be provided for the Board's review

k. Memorandum subject: Request for Discharge for the Good of the Service, 19 November 1979, shows the Deputy Staff Judge Advocate also recommended the applicant be discharged, and that he be issued a UOTHC discharge. The Staff Judge Advocate further stated that the applicant's past record is fair, his present attitude is poor, and his prospects for a successful rehabilitation are poor.

l. On 19 November 1979, the commander of Headquarters, Law Enforcement Command, in Fort Carson, CO, also recommended the applicant be discharged, and that he be issued a UOTHC Discharge Certificate.

m. On 19 November 1979, the separation authority approved the request for the applicant's discharge with an UOTHC. He also directed that he be excluded from the installation, effective immediately.

n. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 30 November 1979, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for wrongfully communicating a threat and for failure to obey a lawful order toward a noncommissioned officer. He was found guilty. His punishment consisted of forfeiture of pay of \$100.00 pay per month for one month, seven-days restriction, and ten-days extra duty, (suspended until 30 December 1979). He did not appeal.

o. Orders 251-608, 17 December 1979, show he was reassigned to the U. S. Army Separation Transfer Point, at Fort Carson, CO, for separation processing.

p. His DD Form 214 for the period ending 27 December 1979, shows the applicant 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 5 months, and 17 days of active service. His grade at the time of discharge was private (E1). He had lost time from 3 October 1979 to 6 November 1979.

4. Due to the applicant's claim of injuries he sustained while on active duty, and other mental health issues, the case is being forwarded to the Medical and Behavioral Health staff at the Army Review Boards Agency.

5. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 17 December 1979 discharge characterized as under other than honorable conditions. On his DD Form 149, he had indicated that PTSD and Other Mental Health conditions are issues are related to this request. He states:

"Requesting an upgrade in status to qualify for Veteran's Affairs Healthcare. Mr. [Applicant] received an injury and also had an undiagnosed and untreated mental health condition while in the Army. These led to behaviors that caused the discharge of under other than honorable conditions.

Mr. [Applicant] suffers from PTSD, Bipolar Disorder, General Anxiety, Severe and ongoing homelessness. These mental health concerns started while he was in the Army and went undiagnosed and untreated. Mr. [Applicant] also suffered an ankle injury while in the Army which has continued to be an issue today."

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 5 June 1979 and was discharged on 27 December 1979 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. Part II of the applicant's Personnel Qualification Record shows the applicant was absent without leave (AWOL) from 3 October 1979 thru 6 November 1979. Subsequent documentation shows he surrendered to military authorities.

e. On 19 November 1979, the applicant voluntarily requested discharge from the Army for the good of the Service under chapter 10 of AR 635-200. That same day, the Commanding General of the 4th Infantry Division (Mechanized) and Fort Carson approved his request with the directive he be given an under other than honorable conditions discharge certificate.

f. On 30 November 1979, the applicant received an Article 15 for wrongful communication a threat to a noncommissioned officer and failure to obey the lawful order of his superior noncommissioned officer.

g. JLV shows the applicant has been receiving intermittent non-service-connected veteran humanitarian care at Veterans Hospital Administration (VHA) facilities since 2019. It shows the applicant, along with his wife and 5 children, became homeless in 2019 when their landlord refused to renew their lease.

h. Since that time, it appears the applicant has had intermittent lack of access to prophylactic anti-seizure medications. He was brought via ambulance to a VHA facility on 9 June 2021 for uncontrolled seizures and was unresponsive upon arrival. From the attending physician's note:

"59-year-old - Past medical history: Seizure disorder, PTSD, bipolar disorder, hypertension - Presents to the emergency department via EMS [emergency medical services] due to recurrent seizures reported medication noncompliance. Patient states that he had been out of his Keppra for the last 5 days as he recently traveled from Virginia and did not have enough. Patient informed EMS he has had 1-2 seizures per day for the last 3 days but had multiple seizures today."

i. An 18 February 2022 social work Mental Health Homeless Program Note stated he had symptoms of psychosis:

“The veteran presented with housing needs. He did not present with any concerns to his safety or the safety of others. He did not present with SI/HI [suicidal ideations / homicidal ideations] but did demonstrate symptoms of psychosis. The veteran was oriented to person, place, and time.

j. The most recent encounter is dated 4 July 2024 and shows he was admitted to the University of Utah Hospital in Salt Lake City for a seizure and suicidal ideations.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? PTSD and bipolar disorder.

(2) Did the condition exist or experience occur during military service? Applicant asserts these mental health conditions were present while he was in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? There is no evidence upon which to base a recommendation for or against mitigation. Both PTSD and bipolar disorder, a condition which typically presents in the teenage years and young adulthood, are associated with avoidant behaviors and resistance to authority. If one or both conditions were present during his service, they would fully mitigate the actions which led to his voluntary request for separation: His period of AWOL, communication a threat to a noncommissioned officer, and failure to obey the lawful order of his superior noncommissioned officer.

l. It is the recommendation of the ARBA medical advisor the board give consideration to clemency under guidelines established in the 25 July 2018 Memorandum – Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military I Naval Records Regarding Equity, Injustice, or Clemency Determinations.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include 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 the misconduct leading to the applicant's separation and the findings in the medical review stating there is insufficient evidence upon which to grant mitigation for that misconduct, 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.

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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 (Armed Forces), 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 (Army Board for Correction of Military Records), currently in effect, 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

3. 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.

4. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. 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.

5. 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

6. Army Regulation 635-5-1 (Separation Program Designators), in effect at the time, 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".

7. 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.

8. 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.

9. 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.

10. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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//