

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20240000110

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge, and a personal 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), 26 September 2023

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 AC92-10972 on 10 February 1993.
2. The applicant states, in effect, due to the Army while working at the firing range he has lost his hearing in his right ear. Additionally, he is stressed out and has vision issues. He is requesting an upgrade in order to receive benefits to live on.
3. On his DD Form 149, he indicates post-traumatic stress disorder (PTSD), and other mental health are related to his request.
4. The applicant enlisted in the Regular Army on 30 April 1974, for a 2-year period.
5. His DA Form 20 (Enlisted Qualification Record) shows he was awarded the military occupational specialty of 62G (Quarryman) and the highest rank he attained was private/E-2.
6. The applicant's duty status changed from present for duty to absent without leave (AWOL) effective on 3 October 1974 and from AWOL to dropped from rolls effective 1 November 1974.
7. Court-martial charges were preferred against the applicant, for violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) dated

1 November 1974, shows he was charged with being AWOL on or about 3 October 1974 and remained so absent.

8. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was apprehended by civilian authorities and was returned to military control on 17 December 1974. His duty status changed from dropped from rolls to present for duty effective 17 December 1974.

9. On 18 December 1974, he stated his reason for going AWOL was due to family problems - supporting a smaller brother and sister.

10. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, Unit Orders Number 7, dated 14 January 1975, show he was approved for discharge from military service with an undesirable discharge and was reduced in grade to private/E-1.

11. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 23 January 1975, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service), in the grade of E-1. His characterization of service was UOTHC with separation program designator code KFS [discharge in lieu of trial by court-martial] and reenlistment code RE-3 and 3B. He completed 6 months and 10 days of net active service this period with 75 days of lost time from 3 October 1974 thru 16 December 1974.

12. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 10 February 1993. After careful consideration, the Board determined the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

13. Discharges under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of is normally considered appropriate.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### 15. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in

the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests reconsideration of his prior request for upgrade from Under Other Than Honorable Conditions. He indicated that PTSD, Other Mental Health were related to his request. He also mentioned Right Ear Hearing Loss on the firing range, and Loss of Eyesight.

2. The ABCMR ROP summarized the applicant's record. The complete facts and circumstances surrounding his discharge were not known. The applicant enlisted in the Regular Army 30Apr1974. His MOS was 62G Quarryman. The DD Form 214 did not show any foreign deployments. He was discharged on 23Jan1975 under provisions of AR 635-200 chapter 10 in lieu of trial by court-martial. He was charged with being AWOL from 03Oct1974 through 17Dec1974. His service was characterized as Under Other Than Honorable Conditions. He was credited with just over 6 months total of service.

3. The applicant claims PTSD and Other Mental Health condition. He reportedly went AWOL due to family problems (supporting a smaller brother and sister). Of note, the 10Feb1993 ABCMR Memorandum of Consideration indicated at that time the applicant claimed he was mentally ill and did not know who to ask for counseling. In the current application, he mentioned the physical stressor of loss of hearing in the right ear on the firing range.

4. The prior ABCMR proceedings indicated that the applicant had undergone a mental status evaluation and physical exam on 26Dec1974 which did not reveal any abnormalities. He was deemed qualified for separation. These documents were not available for direct review.

5. No service treatment records were available for review. No treatment records were found in JLV or were submitted by the applicant. Based on records available for review, there was insufficient evidence to support the applicant had a condition which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. As per Liberal Consideration, the applicant's self-assertion of PTSD is sufficient for consideration for a discharge upgrade as under this policy.

#### 6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant self asserts PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant self asserts PTSD due to in-service trauma.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues. However, as per Liberal Consideration, the applicant's self-assertion of PTSD is sufficient to merit consideration by the board.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered counsel's statement, the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition which failed medical retention standards of AR 40-501, at the time of his discharge. The opine noted, the records were void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

3. 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 found 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 to amend the decision of the ABCMR set forth in Docket Number AC92-10972 on 10 February 1993.

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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, 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 applicants (and/or their counsel) prior to adjudication.

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 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable

opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

5. 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. 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, 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//