

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20240000193

APPLICANT REQUESTS:

- an upgrade his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- [REDACTED] School Diploma, 11 June 1971
- Letter, issued by [REDACTED] 13 October 2023

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 the U.S. Army should have realized he had mental issues (bipolar).
3. The applicant provides a letter issued by the [REDACTED], dated 3 June 2023, which shows he is a patient and has been diagnosed with bipolar II disorder and post-traumatic stress disorder (PTSD).
4. A review of the applicant's service records show:
 - a. His Standard Form 93 (Report of Medical History) and Standard Form 88 (Report of Medical Examination) both completed on 28 December 1973, shows his present health as good, no medications, and no entries in defects and diagnoses. On 14 January 1974, the applicant enlisted in the Regular Army.
 - b. On 9 February 1974, while in basic combat training he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for without

authority and with intent to avoid field exercises, absenting himself from his unit from 7 February at 0730 hours and did remain absent until on or about 1100 hours.

c. He completed Basic Combat Training and Advanced Individual Training and was awarded the military occupational specialty 13B (Cannoneer).

d. He was assigned to Fort Hood, TX on or about 30 May 1974.

e. On 24 June 1974, the applicant's status changed from present for duty to absent without leave (AWOL) to dropped from rolls.

f. On or about 11 July 1974 the applicant was returned to military control.

g. On 22 July 1974, he accepted NJP under Article 15, UCMJ, for failing to go to his appointed place of duty on 10 June 1974. His punishment consisted of reduction to the grade of private/PVT-1; forfeiture of \$150.00 pay for two months; 14 days of extra duty; 30 days of restriction (suspended for 90 days). His DA Form 2627-1 (Record of Proceedings Under Article 15) also shows:

- On 11 June 1974, he failed to be at his place of duty
- On 24 June 1974, he absented himself from his unit from 24 June to 8 July 1974

h. The applicant DA Form 4187 (Personnel Action) shows the following duty status change:

- On 2 August 1974, from present for duty to AWOL
- On 24 August 1974, from AWOL to confined civil authorities, he was charged with burglary of a vehicle
- On 16 September 1974, from confined civil authorities to AWOL; he was released on bond from civilian authorities
- On 24 September 1974, from AWOL to confined civil authorities, for sale of a controlled substance
- On 5 November 1974, confined civil authorities to present for duty

i. His DD Form 458 (Charge Sheet), dated 6 November 1974, shows in part, charge I – specification: on 2 August 1974 without authority the applicant absented himself from his unit and did remain absent until 5 November 1974.

j. His Standard Form 88 (Medical Exam), date of examination, 7 November 1974, shows the applicant stated in item 73 (Notes), "he was in good health."

k. The applicant provided a self-authored statement that shows the Army is not for him; he has not been able to adapt to Army life and never will. He has a history of AWOL's and he spent some time in the stockade. If he gets out, he will have a job as a carpenter waiting for him.

l. On 26 November 1974, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of an Under Other than Honorable Conditions Discharge if his request was approved, and of the procedures and rights available to him. Following this consultation, the applicant requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. In his request, he acknowledged:

(1) He was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He also understood that submitting this request for discharge he acknowledge that he is guilty of the charges against him or of a lesser included offenses therein contained which also authorizes the imposition of a bad conduct or dishonorable discharge.

(2) He had been advised and understand the possible effects of an under other than honorable discharge. As a result of the issuance of such a discharge he will be deprived of many or all Army benefits that he may be ineligible for many, or all benefits administered by the Veterans Administration, and he may be deprived of rights and benefits as a veteran under both state and federal law.

(3) He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(4) He also understood that he may, up until the date the discharge authority approves his discharge, withdraw his acceptance of this discharge.

m. On 26 November 1974, the immediate commander/intermediate commanders recommended approval of the applicant's request for discharge and the issuance of an Undesirable Discharge Certificate.

n. On 6 December 1974, consistent with the chain of command recommendations, the separation authority approved the applicant's elimination from the service under the provisions of AR 635-200, Chapter 10 and ordered the issuance of an Undesirable Discharge Certificate and the applicant's reduction to private/E-1.

o. The applicant was discharged from active duty on 27 December 1974. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, and the issuance of a Under

Other Than Honorable Conditions Certificate. He completed 7 months and 26 days of active service.

4. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

5. By regulation (AR 635-200), a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally considered appropriate.

6. Also by regulation, applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. The applicant indicated Other Mental Health Issues are related to his request and specifically stated that the "Army should have realized [he] had mental issues" noting Bipolar Disorder. It was also noted that the applicant marked 'disability' on his DD Form 149. 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 (RA) on 14 January 1974 as a 13B (Cannoneer), 2) he received an Article 15 on 09 February 1974 for without authority and intent to avoid field exercises absent himself from his unit on 07 February at 0730 until on or about 1100, 3) the applicant received an Article 15 on 22 July 1974 for failing to be at his place of duty (11 July 1974) and absenting himself from his unit from 24 June to 08 July 1974, 4) the applicant's DA 4187 shows that his duty status was changed on the following dates: 02 August 1974 to AWOL, on 24 August 1974 changed from AWOL to confined by civil authorities and noted he was charged with burglary of a vehicle, on 16 September 1974 was changed from confined from confined to civil authorities to AWOL, he was released on bond from civilian authorities, on 24 September 1974, changed from AWOL to confined by civil authorities for sale of a controlled substance, and on 05 November 1974 his duty status was changed from confined by civil authorities to present for duty. His DD Form 458 (charge sheet) dated 06 November 1974 shows that he absented himself from his unit from 02 August 1974 until 05 November 1974, 5) a self-statement dated 25 November 1974 submitted by the applicant as part of his request for discharge states that he hadn't been able to 'adapt to military life and I never will.' 6) the applicant was discharged on 27 December 1974 under the provisions of

Army Regulation (AR) 635-200, Chapter 10, with a separation code of KFS and reenlistment codes of '3' and 3B.'

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Limited in-service medical records were available for review as part of the applicant's application. His Report of Medical Examination and Report of Medical History dated 28 December 1973 documented that the applicant did not endorse any BH-related concerns at the time of enlistment. The applicant's in-service Report of Medical Examination dated 07 November 1974 conducted in conjunction with his separation documented item number 42, psychiatric, as 'normal' on clinical evaluation and documented that the applicant indicated he was 'in good health.' The applicant was medically cleared for separation. A statement of medical condition dated 27 December 1974 shows that the applicant marked on the form that there had been no changes in his medical condition since his last separation examination.

d. A letter submitted by the applicant's commander as part of his discharge processing dated 26 November 1974 documented the applicant's misconduct throughout his time in the military and efforts to counsel him. It also noted that the applicant admitted to substance use (not specified) and that he had been scheduled for an appointment at the 'Friendly House' (the nature of the friendly house was not specified). The commander noted that further rehabilitation efforts would be 'fruitless.'

e. A review of JLV was void of medical information. Of note, the applicant's UOTHC discharge renders him ineligible for VA services.

f. The applicant provided a letter from [REDACTED] dated 13 October 2023 providing verification of his treatment from a civilian/non-VA psychiatric treatment. It was documented that the applicant was diagnosed with Bipolar II Disorder and PTSD and that he was prescribed Lamictal (mood stabilizer), Risperdal (antipsychotic), Fluoxetine (anti-depressant), Benztropine (anti-tremor), and Carbamazepine (anticonvulsant, may be used for the treatment of Bipolar Disorder). There is no information specifying the date(s) of onset for either of these conditions nor any association with his military service.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient information that the applicant had a condition or experience in-service that mitigated his misconduct. The applicant's in-service records

are void of any BH diagnosis or treatment history. Post-discharge, the applicant has been diagnosed with Bipolar II Disorder and PTSD via a non-VA/civilian provider without any indication of date(s) of onset of the conditions nor any association with his military service. Despite the applicant being diagnosed with two potentially mitigating BH conditions post-service, Bipolar II Disorder and PTSD, there is insufficient information available that these conditions existed in-service. However, the applicant contends that he experienced Bipolar Disorder, and per liberal guidance, his assertion is worthy of the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced Bipolar Disorder. He has been diagnosed with Bipolar II Disorder and PTSD via a non-VA/civilian provider since being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. The applicant's available military records were void of any BH diagnosis or treatment history. The applicant does not have any VA records available for review though it is acknowledged that his UOTHC discharge renders him ineligible for VA services. Post-discharge, the applicant has been diagnosed with treated for Bipolar II Disorder and PTSD through a non-VA civilian provider; however, the available documentation does not specify the date(s) of onset of these conditions nor associate these conditions with his service and there is insufficient evidence that the applicant exhibited symptoms consistent with these conditions in-service. As such, while there is evidence that the applicant has been diagnosed with two potentially mitigating BH conditions that might otherwise provide the basis for BH mitigation for some of his misconduct, in particular his misconduct of AWOL, there is insufficient information available indicating that these conditions existed in service. Of note, even if the applicant's diagnosed conditions were presumed to have been relevant at the time of his discharge, BH mitigation would not be supported for misconduct related to burglary and sale of a controlled substance and as such only partial BH mitigation would be supported for AWOL. However, as there is insufficient evidence supporting his assertion, BH mitigation is unclear.

i. Regarding disability, as there is insufficient evidence that the applicant had a BH condition that fell below retention standards IAW AR 40-501 while in-service, a referral to IDES is not warranted.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, 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 fully 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

2/26/2025

XCHAIRPERSON


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) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19.

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.

3. 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.

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 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.

5. 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 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, 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.

6. 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//