

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20240000539

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests personal appearance before the Board.

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) (2)
- DA Form 2166-6 (Noncommissioned Officer (NCO) Evaluation Report)
- Character reference letters (4)
- Letter of Recognition

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 at the time of his discharge, he was going through great mental distress due to his wife's adultery. He requested leave so that he could go home and handle his family affairs. His commander denied his leave and instead sent him out to a field exercise. He was not in his right mental state and decided to leave base. Prior to this, he had two periods of honorable service and had hoped to continue his career in the Army. He is now remarried and has two children and five grandchildren. He has provided for his family as a truck driver since his discharge from the Army. He is an upstanding citizen who has never been in trouble with the law.

3. On his DD Form 149, the applicant notes other mental health issues are related to his request.

4. The applicant enlisted in the Regular Army on 17 July 1979, for 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 63Y (Track Vehicle Mechanic).

5. The applicant was honorably discharged on 16 July 1982. He was issued a DD Form 214, for this period of service and credited with 3 years of net active service for this period.

6. The applicant enlisted in the Regular Army on 5 April 1984. He re-enlisted on 9 January 1986, for 6 years in the rank of sergeant/E-5.

7. A Medical Record – Consultation Sheet, dated 24 July 1986, shows the applicant was referred to outpatient psychiatry for depression. The attending physician noted the applicant was drinking excessively and rationalizing it with the separation from his family and social isolation.

8. On 5 April 1988, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 14 June 1988.

9. Court-martial charges were preferred against the applicant on 29 June 1988, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

10. On 30 June 1988, 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 a bad conduct discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was 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.

b. He submitted a statement in his own behalf stating that he wanted to be chaptered, so he could go back to take care of his wife and kids.

11. The applicant's commander recommended approval of the applicant's request for discharge. The commander noted the applicant stated he deserted because he was dissatisfied with his unit and has lost the desire to remain on active duty. His desertion and stated desire to leave the Army indicated he lacked the potential of becoming a productive Soldier if retained.

12. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 8 July 1988, and directed his discharge UOTHC.

13. The applicant was discharged on 23 September 1988. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reenlistment Code 4. He completed 4 years, 3 months, and 19 days of net active service this period with 70 days of lost time.

14. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

15. The applicant provides four-character reference letters and a letter of recognition that attest to the applicant's mental health during his time in service. Several letters speak to his post-service accomplishments and work ethic. These letters are provided in their entirety for the Board's review within the supporting documents.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

b. 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:

- The applicant enlisted in the Regular Army on 17 July 1979.
- The applicant was honorably discharged on 16 July 1982.
- The applicant enlisted in the Regular Army on 5 April 1984. He reenlisted on 9 January 1986, for 6 years in the rank of sergeant/E-5.

- On 5 April 1988, the applicant was reported as absent without leave (AWOL) and remained absent until he surrendered to military authorities on 14 June 1988.
- Court-martial charges were preferred against the applicant on 29 June 1988, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.
- On 30 June 1988, 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 a bad conduct discharge; and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service.
- He submitted a statement in his own behalf stating that he wanted to be chaptered, so he could go back to take care of his wife and kids.
- The applicant was discharged on 23 September 1988. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reenlistment Code 4.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "at the time of his discharge, he was going through great mental distress due to his wife's adultery. He requested leave so that he could go home and handle his family affairs. His commander denied his leave and instead sent him out to a field exercise. He was not in his right mental state and decided to leave base. Prior to this, he had two periods of honorable service and had hoped to continue his career in the Army. He is now remarried and has two children and five grandchildren. He has provided for his family as a truck driver since his discharge from the Army. He is an upstanding citizen who has never been in trouble with the law."

Due to the period of service no active-duty electronic medical records were available for review. A psychiatric consultation on 24 July 1986, shows the applicant was referred to outpatient psychiatry for depression. The attending physician noted the applicant was drinking excessively and reporting difficulty with separation from his family and social isolation. The applicant reported difficulty sleeping, social isolation, irritability, and depressed mood. The consultation further notes the applicant was referred to psychiatry in October 1985. Overall, the consultation recommended residential treatment for the applicant.

d. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. In addition, he

has not engaged in behavioral health services via the VA, possibly due to issues with eligibility.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates his discharge.

f. Kurta Questions

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with depression during military service and recommended for residential treatment.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged for one specification of being AWOL. Hardcopy medical documentation indicates the applicant was diagnosed with depression and recommended for residential treatment while in service. Given the nexus between depression and avoidance, his instance of AWOL is mitigated by his diagnosis of depression.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered 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 the medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience and subsequent behavioral health condition during military service that mitigates his discharge.

2. Kurta Questions

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with depression during military service and recommended for residential treatment.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged for one specification of being AWOL. Hardcopy medical documentation indicates the applicant was diagnosed with depression and recommended for residential treatment while in service. Given the nexus between depression and avoidance, his instance of AWOL is mitigated by his diagnosis of depression.

3. The Board determined that there was sufficient evidence of in-service mitigating factors to support the applicant's request for relief. In reaching its decision, the Board considered the absence of any additional documented misconduct during the applicant's service and acknowledged his two prior periods of honorable service. Given these circumstances, the Board concluded that the applicant's characterization of service was unduly harsh. During deliberations, the Board also noted that the applicant's DD Form 214 did not reflect his earlier honorable periods of service. In light of the totality of the record and under the provisions of liberal consideration, the Board found it appropriate to upgrade the applicant's character of service to Under Honorable Conditions (General). Additionally, the Board directed correction of the applicant's official military records to accurately reflect his prior honorable service.

4. 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


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| : | : | : | GRANT FULL RELIEF |
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| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 for the period ending 23 September 1988 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
 - CONTINUOUS HONORABLE SERVICE FROM 840405 UNTIL 860108
- and in
- Item 24 (Characterization of Service) – Under Honorable (General) Conditions

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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| 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.

ADMINISTRATIVE NOTE(S): N/A

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

a. Paragraph 2-9 states 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.

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. The version in effect at the time provided that:

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.

c. Chapter 10 provided 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, a UOTHC discharge was normally considered appropriate.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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 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.

6. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

7. 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. 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, 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//