

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240000600

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149/Application for Correction of Military Record
- Self-Authored Statement
- DD Form 214/Certificate of Release or Discharge
- Veterans Affairs (VA) Documents
- Orders 128-268/Assignment Order, 7 May 1980
- Certificate of Death, [REDACTED]
- Social Security Death Index
- DD Form 214 (Report of Separation from Active Duty)
- Recommendation for the Primary Noncommissioned Officer Course (PNCOC) or other Leadership Courses

FACTS:

1. The applicant did not file within the three-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:

a. He walked out of the front gate at Fort Ord, CA and went to the Monterey hospital emergency room. He spent 45 or 48 days in the mental health ward while seeking help for his son's death and his wife's deep depression. Once he was released, he wandered around homeless and decided to turn himself in to military police. The Army did not accept or acknowledge his time in the hospital. He later called the hospital and was informed that all records prior to 2002 had been purged or destroyed.

b. Further, he has filed a claim against Fort Ord, due to being diagnosed with three different cancers. He was told that in order to continue with his claim, he would need to get his second discharge upgraded. Lastly, he is asking and praying that the Army considers his hardship from 44 years ago and decide to make right of his past mistakes, so he and his family can move on and rest in peace.

3. The applicant's Enlistment Contracts and Report of Separation show:

- Enlisted in the Regular Army on 30 November 1973, honorably discharged on 24 November 1975
- Enlisted in the U.S. Army Reserve (USAR) on 25 November 1975, honorably discharged on 4 February 1976 for enlistment in the California Army National Guard (ARNG)
- Served in the ARNG from 5 February 1976 until 4 February 1977 (honorably)
- Enlisted in USAR on 11 February 1977, then Regular Army on 15 February 1977

4. On 22 August 1979, he received a Company Grade Article 15 for on or about 19 July 1979, failing to go to his appointed place of duty, and on 13 August 1979. His punishment consisted of a reduction to E-3 and extra duty for 14 days.

5. Court-martial charges were preferred against the applicant on 5 May 1980 for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows the following:

- Charge 1 and Specification 1: On or about 17 October 1979, without authority, absent himself from his unit, and did remain so absent until on or about 5 November 1979
- Charge 1 and Specification 2: On or about 9 November 1979, without authority, absent himself from his unit, and did remain so absent until on or about 2 May 1980

6. On 7 May 1980, 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, request for discharge in lieu of trial by courts-martial. 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.

b. 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. He did not submit a statement in his own behalf.

7. The applicant's commander recommended approval of the request for discharge on 30 May 1980.

8. The separation authority approved his request for discharge in lieu of trial by court-martial on 6 June 1980 and directed his discharge UOTHC.

9. The applicant was discharged on 20 June 1980. His DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He completed 2 years, 9 months, and 22 days of net active service this period.

10. The applicant provides:

a. A Department of Veterans Affairs memorandum, dated 12 April 2010. The applicant contends that he thought both discharges were honorable. The Military Information section shows:

(1) Army, Honorable, 30-Nov-1973 - 24-Nov-1975

(2) Army, Honorable, 15-Feb-1977 - 20-Jun-1978

b. A DA Form 2496, Disposition Form, showing the applicant was absent without leave (AWOL) on 9 November 1979 and dropped from the rolls on 13 November 1979 (7 days).

c. Military Orders Number 128-268, dated 7 May 1980, showing he was assigned to the United States Army personnel Control Facility.

d. A Certificate of Death for an infant (22 days), with a date of 12 December 1978. The applicant is listed as the father.

e. A Social Security Death Index memorandum, undated. The document shows Mr. [REDACTED] passed/died in [REDACTED]

f. Recommendation for the PNCOC and other Leadership Courses, dated November 1977. All four Soldiers spoke highly of the applicant's job performance and future potential.

10. 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.

MEDICAL REVIEW:

1. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends OMH as related to his request.

2. 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:

- Applicant enlisted in the Regular Army on 30 November 1973 and was honorably discharged on 24 November 1975.
- Applicant enlisted in the U.S. Army Reserve (USAR) on 25 November 1975 and was honorably discharged on 4 February 1976 for enlistment in [REDACTED] Army National Guard (ARNG). He served in the ARNG from 5 February 1976 until 4 February 1977 (honorably).
- He enlisted in USAR on 11 February 1977, then Regular Army on 15 February 1977.
- On 22 August 1979, he received a Company Grade Article 15 for failing to go to his appointed place of duty, on or about 19 July 1979 and on 13 August 1979.
- Court-martial charges were preferred against the applicant on 5 May 1980 for violations of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows the following:
 - Specification 1: On or about 17 October 1979, without authority, absent himself from his unit, and did remain so absent until on or about 5 November 1979
 - Specification 2: On or about 9 November 1979, without authority, absent himself from his unit, and did remain so absent until on or about 2 May 1980
- Applicant was discharged on 20 June 1980. His DD Form 214 (Certificate of Release of Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, UOTHC, in lieu of trial by court-martial. He completed 2 years, 9 months, and 22 days of net active service this period.

3. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he walked out of the front gate at Fort Ord, CA and went to the Monterey hospital emergency room. He spent 45 or 48 days in the mental health ward while seeking help for his son's death and his wife's deep depression. Once he was released, he wandered around homeless and decided to turn himself in to military police. The Army did not accept or acknowledge his time in the hospital. He later called the hospital and was informed that all records prior to 2002 had been purged or destroyed. Further, he has filed a claim against Fort Ord, due to being diagnosed with three different cancers. He was told that in order to continue with his claim, he would need to get his second discharge upgraded.

4. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review related to the applicant's time in service. The applicant provides a Certificate of Death of his infant son (22 days), dated [REDACTED] as well as a Social Security Death Index memorandum which he provides as proof of his father's death in [REDACTED]. The service record evidences a memo dated 30 May 1980, stating the applicant went AWOL due to family problems and he desired a discharge because of his intense dislike of the military lifestyle. He further stated if he were returned to duty, he would once again go AWOL. In addition, the memo indicates he declined to consider applying for a hardship discharge or compassionate reassignment.

5. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant has an extensive medical treatment history via the VA. However, he has been reluctant to engage in behavioral health services and the record shows his primary diagnoses are Alcohol Dependence and Opioid Dependence. On 5 March 1999, the applicant was referred for a substance abuse evaluation due to his history of alcohol and pain relief addiction (morphine, percocet, loreset, darvocet). He reported a 27-year history of daily alcohol use, as well as use of opioid pain relief since June 1995. He had no prior substance abuse treatment but reported a history of 3 DWI's, the last one in January 1999. During a follow-up to complete his assessment, on 31 March 1999, the applicant discontinued any further assessment. On 7 July 2003, the applicant participated in a mental health assessment since he was seeking to renew medications prescribed by a civilian provider. During this evaluation, he shared having been hospitalized in 1998 due to a cocaine overdose. The applicant reported cocaine use from 1979 to 1993. He further shared a childhood history of seizures, being diagnosed with epilepsy from 3rd to 11th grade, and prescribed Dilantin. He discontinued this medication and withheld the information about his seizures in order to enlist in the military. Following this assessment, the applicant was diagnosed with 1) Pain Disorder Associated with Psychological factors and a general medical condition; 2) Alcohol Dependence Without Physiological Dependence; and 3) Opioid Dependence,

On Agonist Therapy. On 23 February 2004, the applicant was provided with a renewal of his antidepressant medication and the note indicates the applicant was stable with no noted symptoms of depression. The record shows on 5 November 2007, the applicant declined a mental health evaluation that was requested after he became agitated with medical personnel when informed of a change in his pain relief medication. A follow-up note dated 28 November 2007; indicates a risk flag was placed on the applicant's record due to his disruptive behavior. Another disruptive behavior incident note is evidenced in the chart on 6 September 2017. The record further shows on 18 June 2024, the applicant participated in a social work assessment and was requesting counseling due to his recent diagnosis of prostate cancer. There is no evidence he participated in follow-up mental health services.

6. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

7. Kurta Questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

b. Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service. However, the applicant provided documentation indicating he experienced two significant personal stressors, the death of his father and a year later the death of his infant son.

c. Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The medical documentation available for review shows an extensive and longstanding substance abuse history that appears to have contributed to some depressive symptoms. However, the available record shows the applicant has been diagnosed with Alcohol Dependence and Opioid Dependence. Per Liberal Consideration guidelines, substance abuse in the absence of a diagnosed mental health condition would not provide mitigation. In addition, although there is evidence the applicant experienced significant personal stressors while in service, the death of his father and his infant son, these are not behavioral health conditions that would provide mitigation.

d. Per Liberal Consideration guidelines, his assertion of OMH on his application is sufficient to warrant 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Kurta Questions, which were addressed by the ARBA medical provider, note the applicant had a condition or experience that may excuse or mitigate the discharge in that he selected "Other Mental Health (OMH)," as related to his request. While there is no medical documentation indicating the applicant was diagnosed with any BH condition during military service, he did provide documentation indicating he experienced two significant personal stressors, the death of his father and a year later the death of his infant son. The Board felt the deaths of his father and his infant son were sufficient to cause a mitigating OMH condition, which in the opinion of the Board, are sufficient to justify mitigation of some of his behavior, and to upgrade the applicant's characterization of service to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by correcting his DD Form 214 to:

- a. upgrade his characterization of service to under honorable conditions (general); and as a result of his upgrade
- b. restore his rank/grade to private first class (PFC)/E-3 and his date of rank to 17 Ferbruary 1980.

5/6/2025

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.

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. Section 1556 of Title 10, U.S. Code, 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. 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.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. 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 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. 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/NR) 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.

//NOTHING FOLLOWS//