

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20240000623

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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 29 September 2023
- Self-Authored Statement
- character reference, from L.B.

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 he enlisted at the age of 20, with his aunt's guidance and assistance, he went to basic combat training, where he did well and was sent to his first duty station in Germany. While in Germany, he worked hard, was promoted from private to specialist within a year and a half and completed all of his duties or tasks on time.

a. When his tour in Germany was complete, he arrived and began working at his new duty station in Colorado. He noticed there was favoritism in his group, other Soldiers were allowed to arrive late to work, and he had to arrive on time. He would argue with his sergeant because of the long hours he was required to work without help. Tension between him and his sergeant was on going, which led one day to a fight.

b. After he and his sergeant fought, within 24 hours he learned of his aunts passing. He spiraled into depression, where he no longer wanted to serve. He was mentally drained, and he went absent without leave. When he returned, he was told he would be put in military jail, he began to panic and was afraid. He remembers signing paperwork; however, he did not know he would receive a dishonorable discharge.

c. He stood proud as a Soldier; he is appreciative of the knowledge he gained while serving and apologizes for his actions. After his discharge, he worked in his community and volunteered for youth sports, including football and basketball, he assisted with senior citizens, and helped his family, one of whom recovered from drug abuse. He has since fell upon hard times, his health is declining, he is homeless, and struggling to make it day to day. He is hoping the Board takes into consideration the hard work ethic he displayed while serving.

3. On his DD Form 293, the applicant indicates other mental health is related to his request.

4. The applicant enlisted in the Regular Army on 16 October 1990.

5. The applicant's DA Form 2-1 (Personnel Qualification Record) shows he went absent without leave (AWOL) on or about 26 July 1993. A DA Form 4187 (Personnel Action) shows his duty status changed from dropped from the rolls to present for duty on or about 21 September 1994. Additionally stating, the applicant was apprehended by civilian authorities.

6. On 27 September 1994, court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 26 July 1993 and remained AWOL until on or about 21 September 1994. He was recommended to be tried by a special court-martial empowered to adjudge a bad conduct discharge.

7. The applicant consulted with legal counsel on 27 September 1994, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal

advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

8. On 6 October 1994, the applicant's immediate and intermediate commander's recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

9. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 20 October 1994. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

10. The applicant was discharged on 15 November 1994, under the provisions of AR 635-200, Chapter 10, for the good of service, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code KFS and reentry code 3. He was credited with 2 years, 11 months, and 5 days of active service, with lost time from 26 July 1993 to 20 September 1994. He was awarded or authorized the:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge (M-16 Rifle)
- Second Class Qualification Badge (Hand Grenade)

11. The applicant provides a character reference statement from his cousin, L.B., where she states in effect, the applicant was a true inspiration, he assisted her parents by watching her and ensuring her safety. She learned from his character, his integrity, and his genuine love for family. When her mother passed away, he continued to check in with her and support her emotionally. She is truly thankful he is a part of her life.

12. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

13. 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.

14. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable

conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 into the Regular Army on 16 October 1990.
- The applicant had court-martial charges preferred against him for being AWOL from July 1993 to September 1994, and he requested discharge under Army Regulation (AR) 635-200, Chapter 10, for the good of the service.
- The applicant was discharged on 15 November 1994 and was credited with 2 years, 11 months, and 5 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that after a successful tour in Germany, he was stationed in Colorado and did not get along with his sergeant. He reported experiencing depression and a grief reaction after the death of his aunt, which precipitated his AWOL. He reported not understanding that his discharge would be UOTHC. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. However, there is no evidence, beyond self-report, that he was experiencing depression or any other mental health condition. No medical or mental health records were provided, and JLV showed no mental health history.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service or after discharge, and the applicant did not provide any records or other evidence beyond the misconduct itself. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health

conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

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 the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 26 July 1993 to 21 September 1994, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of other mental health condition; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

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, 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. AR 635-200, 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 UCMJ 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 UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service.

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 (Feneral) 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.

d. An UOTHC discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and the good of the 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 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 post-traumatic stress disorder; 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.

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. 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//